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Rules and Regulations

Federal Register
Vol. 66, No. 244
Wednesday, December 19, 2001

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–3 IFR]

Raisins Produced From Grapes Grown in California; Extension of Redemption Date for Unsold 2001 Diversion Certificates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule extends the deadline by which raisin handlers must redeem diversion certificates issued under the 2001 raisin diversion program (RDP). The deadline is specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). This action gives producers additional time to sell their certificates to handlers and thus be compensated for diverting their 2001 production, which is the intent of the RDP.

DATES: Effective December 20, 2001. Comments received by January 3, 2002, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–5698, or e-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–5698, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule extends the deadline by which handlers may redeem diversion certificates issued under the 2001 RDP for Natural (sun-dried) Seedless (NS) raisins. The deadline is extended from December 17, 2001, to January 18, 2002, and applies only to certificates unsold by producers to handlers as of December 18, 2001. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule extends the deadline by which handlers may redeem diversion certificates issued under the 2001 NS RDP. The deadline is extended from December 17, 2001, to January 18, 2002, and applies only to certificates unsold by producers as of December 18, 2001. This action gives producers additional time to sell their certificates to handlers and thus be compensated for diverting their 2001 production, which is the intent of the RDP. This action was recommended by the RAC at a meeting on December 11, 2001, by a near unanimous vote of 36 in favor, 2 opposed (believed the RAC should adhere to the current deadline), and 1 abstained.

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds

from sales of reserve raisins are ultimately distributed to producers.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for controlling overproduction. Authority for the program is provided in § 989.56 of the order. Paragraph (e) of that section provides authority for the RAC to establish, with the approval of USDA, such rules and regulations as may be necessary for the implementation and operation of an RDP. Accordingly, additional procedures and deadlines are specified in § 989.156.

Pursuant to these sections, the RAC must meet by November 30 each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC prior to December 20. The RAC conducts a lottery if the tonnage applied for exceeds what has been allotted. RAC staff then notifies producers whether they have been accepted into the program.

Approved producers curtail their production by vine removal or some other means established by the RAC. Such producers receive a certificate the following fall from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC by December 15 (Monday, December 17, 2001, for the 2001 RDP since December 15 fell on a Saturday) and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly from a producer).

2001 NS Diversion Program

The 2000–01 California NS raisin crop was the largest on record with final deliveries of raisins from producers to handlers totaling 432,616 tons. This compares to the 10-year average of 344,303 tons. With this large crop, 203,330 tons of NS raisins were set aside in a reserve pool. Of that reserve tonnage, 89,076 tons were ultimately allocated to a diversion program. As of December 1, 2001, 70,529 tons of diversion certificates had been acquired by handlers. It was reported at the December 11, 2001, RAC meeting, by RAC staff that the status of about 2,000 tons of 2001 diversion certificates are unknown.

RAC Recommendation

The RAC met on December 11, 2001, and addressed a concern expressed by some producers with the 2001 RDP. Some producers have had trouble selling their 2001 diversion certificates to handlers. There was concern that some certificates may remain unsold and unredeemed by the December 15 deadline (or Monday, December 17, 2001, for the 2001 RDP since December 15 fell on a Saturday). Several reasons were mentioned as to why this was occurring. The California raisin industry as a whole is experiencing a severe economic downturn. Two short crops in 1998 and 1999 along with other factors caused producer prices to drop drastically for the 2000 crop, marking the first time in about 13 years that prices had fallen. The value of handler inventories has likewise fallen which has contributed to handler difficulties in securing financing to purchase diversion certificates from producers. In addition, some handlers do not need any more raisins to meet their market needs. In some instances, producers have tried to negotiate a premium price for their certificates with handlers.

After deliberating various options (discussed in the following section of this rule regarding the Regulatory Flexibility Analysis), the RAC recommended extending the deadline for handlers to redeem 2001 diversion certificates from December 17, 2001, to January 18, 2002. The extension applies only to 2001 certificates unsold by producers as of December 18, 2001. Producers still holding certificates must have the certificates verified and stamped appropriately by the RAC by December 21, 2001, to indicate that such certificates will be valid until January 18, 2002. Handlers may then purchase these certificates from producers and redeem them for 2000–01 crop reserve raisins following prescribed procedures in § 989.156(k). This action will give producers still holding certificates additional time to sell their certificates to handlers, and give handlers additional time to secure financing to purchase the certificates from producers and redeem them with the RAC. Thus, producers will likely be compensated for diverting their 2001 production, which is the intent of the RDP. Section 989.156(k) is changed accordingly for the 2001 RDP only.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule revises § 989.156(k) of the order's rules and regulations regarding the RDP. Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. This rule extends the date whereby handlers may redeem 2001 diversion certificates with the RAC from December 17, 2001, to January 18, 2002, and applies only to certificates unsold by producers to handlers as of December

18, 2001. Authority for this action is provided in § 989.56(e) of the order.

Regarding the impact of this action on affected entities, producers who curtailed 2001 production and have had trouble selling their diversion certificates to handlers will have additional time to sell their certificates to handlers. Handlers pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. For the 2001 RDP, the industry average free tonnage price applied to diversion certificates was $854 per ton, and applicable harvest costs as established by the RAC were $340 per ton. Preliminary volume regulation percentages for the 2001–02 crop were announced by the RAC at 56 percent free and 44 percent reserve. Thus, using these figures, if a producer was issued a certificate for 100 tons of raisins, he/she would be paid $138.24 per ton by the handler, or a total of $13,824 (($854 per ton × 100 tons × .56) minus (100 tons × $340 per ton harvest cost)). Extending the deadline allows producers additional time to sell their certificate and earn some income for not producing a 2001 crop.

Regarding the impact of this action on handlers, handlers experiencing financial difficulty would have additional time to arrange for financing through likely extending lines of credit with financial institutions. Handlers pay producers for the free tonnage applicable to the diversion certificate minus the $340 per ton harvest cost. Handlers redeem the certificates for 2000–01 crop NS reserve raisins and pay the RAC the $340 per ton harvest cost, plus payment for bins ($20 per ton) and for receiving, storing, fumigating, handling (currently totaling $46 per ton) and inspecting (currently $9.00 per ton) the tonnage represented on the certificate (or a total of $415 per ton). In the above example, the handler would redeem the 100-ton certificate with the RAC, pay the RAC $41,500 ($415 per ton × 100 tons), and receive 44 tons (.44 × 100 tons) of raisins from the 2000–01 reserve pool.

In addition, the $41,500 in the above example paid by the handler to the RAC would be allocated to the 2000–01 reserve pool and be used to pay remaining pool expenses or be distributed to 2000–01 reserve pool equity holders (producers). Thus, all such equity holders could potentially benefit from this action.

Several alternatives to the recommended action were considered by the RAC and/or by the RAC's Administrative Issues' Subcommittee. It was proposed that the RAC purchase unsold diversion certificates from producers. However, the order currently provides no authority for this. In addition, there are concerns as to how this would impact future raisin diversion programs, in particular, whether the integrity of the RDP could be maintained.

It was also proposed that a late fee be added to handlers' costs for redeeming diversion certificates after December 17, 2001. However, the order provides no authority for such a late charge. Another option considered was to take no action and adhere to the current deadline. Some industry members believe that there is no guarantee that producers can sell their harvested crop each season, and there should likewise be no ''guarantee'' that producers can sell their diversion certificates.

There was also consideration of other extension dates besides January 18, 2002. However, after much deliberation, the majority of RAC members believe that extending the deadline to January 18, 2001, was the best solution to this situation. This date will allow the RAC sufficient time before it recommends final volume regulation percentages to ensure that all redeemed diversion certificates are properly reported as 2001 acquisitions by handlers and included in the 2001–02 crop estimate.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirement referred to in this rule (i.e., the application) has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the RAC's meeting on December 11, 2001, and the RAC's Administrative Issues Subcommittee meeting on December 5, 2001, where this action was deliberated were all public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and information impact of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this rule. Fifteen days is deemed appropriate because the deadline is extended until January 18, 2002, and comments should be received by USDA prior to that date.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule needs to be in effect as soon as possible to extend the December 17, 2001, deadline; (2) this rule is a relaxation of the existing regulations because it extends a deadline; (3) producers are aware of this action which was recommended by the RAC at a public meeting; and (4) this interim final rule provides a 15-day comment period for written comments and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.156, paragraph (k) is revised to read as follows:

§ 989.156 Raisin diversion program.

* * * * *

(k) *Redemption of certificates.* Any handler holding diversion certificates may redeem such certificates for reserve pool raisins from the Committee. To

redeem a certificate, a handler must present the diversion certificate to the Committee and pay the Committee an amount equal to the established harvest costs plus an amount equal to the payment for receiving, storing, fumigating, handling, and inspecting raisins as specified in § 989.401 for the entire tonnage shown on the certificate. Handlers who acquire diversion certificates from producers shall report acquisitions of such certificates and submit them for redemption in a manner and for the reporting periods provided in § 989.173(b) for the acquisition of raisins acquired from producers. The Committee shall issue a reserve release entitling the handler to an amount of reserve pool raisins equal to the entire tonnage shown on the certificate. Upon receipt of the diversion certificate, the Committee shall note on the certificate that it is cancelled. Diversion certificates will only be valid and honored if presented to the Committee for redemption on or before December 15 of the crop year for which they were issued: *Provided*, That for the 2001 diversion program for Natural (sun-dried) Seedless raisins, producers who have not sold certificates to handlers on or before December 17, 2001, may present them to the Committee on or before December 21, 2001. The Committee shall verify and stamp such certificates to indicate that the certificate is valid until January 18, 2002. Handlers may redeem such certificates with the RAC on or before January 18, 2002, in the same manner as described elsewhere in this paragraph (k).

* * * * *

Dated: December 14, 2001.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–31321 Filed 12–17–01; 10:22 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–17–AD; Amendment 39–12557; AD 2001–25–04]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. Models LTS101–600A–2 and LTS101–600A–3 Turboshaft Engines; and LTP101–600A–1A and LTP101–700A–1A Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Honeywell International Inc. (formerly AlliedSignal Inc. and Textron Lycoming) Models LTS101–600A–2 and LTS101–600A–3 turboshaft engines; and LTP101–600A–1A and LTP101–700A–1A turboprop engines. This amendment requires replacing certain fuel controls that have beryllium-copper bellows with improved fuel controls that incorporate Inconel 718 stainless steel welded bellows. This amendment is prompted by a report of an uncommanded power loss on a Textron Lycoming LTS101 engine due to a corrosion damaged fuel control bellows. The actions specified by this AD are intended to prevent the engine from reducing the fuel flow to minimum flow resulting in an uncommanded power loss.

DATES: Effective date January 23, 2002.

ADDRESSES: The information in this AD may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5245, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Honeywell International Inc. (formerly AlliedSignal Inc. and Textron Lycoming) Models LTS101–600A–2 and LTS101–600A–3 turboshaft engines; and LTP101–600A–1A and LTP101–700A–1A turboprop engines was published in the **Federal Register** on March 12, 2001 (66 FR 14345). That action proposed to require replacement of fuel controls with the following part numbers with an improved design fuel control that incorporates an Inconel 718 stainless steel welded bellows.

4–301–098–01
4–301–098–04
4–301–098–10
4–301–098–15
4–301–288–01
4–301–288–04
4–303–023–01
4–303–023–02
4–303–023–03
4–303–023–04
4–303–033–01
4–303–033–02
4–303–033–04

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

The FAA estimates that 40 engines installed on aircraft of U.S. registry would be affected by this proposed AD and that it would take approximately 3 work hours per engine to accomplish the proposed actions. The average labor rate is $60 per work hour. There are no required parts costs. Based on these figures, the total cost effect of the proposed AD on U.S. operators is estimated to be $7,200.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic effect, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is

contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2001–25–04 Honeywell International Inc.: Amendment 39–12557. Docket No. 99–NE–17–AD.

Applicability

This airworthiness directive (AD) is applicable to Honeywell International Inc. (formerly AlliedSignal Inc. and Textron Lycoming) Models LTS101–6000A–2 and LTS101–600A–3 turboshaft engines; and LTP101–600A–1A and LTP101–700A–1A turboprop engines with fuel controls with the following part numbers (P/N's) installed:

TABLE 1.—FUEL CONTROL P/N'S

Engine Model No.	Fuel Control P/N
LTS101–600A–2	4–301–098–01, 4–301–098–04, 4–301–098–10, 4–301–098–15.
LTS101–600A–3	4–301–288–01, 4–301–288–04.
LTP101–600A–1A	4–303–023–01, 4–303–023–02, 4–303–023–03, 4–303–023–04.
LTP101–700A–1A	4–303–033–01, 4–303–033–02, 4–303–033–04.

These engines are used on, but not limited to, Aerospatiale AS350 helicopters and Air Tractor AT–302, Page Thrush, Piaggio P.166–DL3, and Riley International R421 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required at the next replacement of the fuel control or within 12 calendar months after the effective date of this AD, whichever occurs first.

To prevent the engine from reducing the fuel flow to minimum flow resulting in an uncommanded power loss:

(a) Remove any fuel control that has one of the P/N's listed in Table 1 of this AD, and replace with a fuel control that does not have one of the part numbers listed in Table 1 of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angles Aircraft Certification Office (LAACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Effective Date

(d) This amendment becomes effective on January 23, 2002.

Issued in Burlington, Massachusetts, on December 7, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–30951 Filed 12–18–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–46–AD; Amendment 39–12558; AD 2001–25–05]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (Formerly Allison Engine Company) AE 3007 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) AE 3007 series turbofan engines. That AD currently requires removal of certain compressor cone shafts from service before exceeding new cyclic life limits and replacement with serviceable parts. This amendment requires increasing the cyclic life limit for certain serial numbers of new compressor cone shafts, part number (P/N) 23070729, that are used on AE3007A1/3 and AE3007A1P engines. This amendment is prompted by recent approved changes in engineering and manufacturing processes for new compressor cone shafts P/N 23070729. The actions specified by this AD are intended to prevent low-cycle fatigue (LCF) failure of cone shafts, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date January 23, 2002.

ADDRESSES: The information in this AD may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Michael Downs, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–7870, fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–09–05, Amendment 39–11714 (65 FR 26121, May 5, 2000), which is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) AE 3007 series turbofan engines was published

in the **Federal Register** on May 25, 2001 (66 FR 28850). That action proposed to require increasing the cyclic life limit for certain serial numbers of new compressor cone shafts, part number (P/N) 23070729, that are used on AE3007A1/3 and AE3007A1P engines.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 598 Rolls-Royce Corporation (formerly Allison Engine Company) AE 3007 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 364 engines installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 150 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,921 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,703,244.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11714 (65 FR 26121, May 5, 2000) and by adding a new airworthiness directive, Amendment 39–12558, to read as follows:

2001–25–05 Rolls-Royce Corporation: Amendment 39–12558. Docket No. 99–NE–46–AD. Supersedes AD 2000–09–05, Amendment 39–11714.

Applicability

This airworthiness directive (AD) is applicable to Rolls-Royce Corporation (formerly Allison Engine Company) models AE 3007A, AE 3007A1, AE 3007A1/1, AE 3007A1/2, AE 3007A1/3, AE 3007A1P, and AE 3007C turbofan engines, with compressor cone shafts, part numbers (P/N's) 23050728 and 23070729, installed. These engines are installed on but not limited to EMBRAER EMB–135 and EMB–145 series and Cessna 750 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent low-cycle fatigue (LCF) failure of cone shafts, which could result in an uncontained engine failure and damage to the airplane, do the following:

(a) For Rolls-Royce Corporation model AE 3007A engines, remove cone shafts from service prior to accumulating 9,500 cycles-since-new (CSN) and replace with serviceable parts.

(b) For Rolls-Royce Corporation model AE 3007C engines, remove cone shafts from service prior to accumulating 14,500 CSN and replace with serviceable parts.

(c) For Roll-Royce Corporation models AE 3007A1, AE 3007A1/1, and AE 3007A1/2 engines, remove cone shafts from service prior to accumulating 7,500 CSN and replace with serviceable parts.

(d) For Rolls-Royce Corporation model AE 3007A1/3 engines:

(1) With compressor cone shafts P/N 23070729, serial number (SN) MM78599, MM78615, MM78632, MM78650, MM78651, MM78652, MM78653, MM78654, MM78655, MM78656, MM78657, MM78658, MM78659, MM78660, MM78661, MM78662, MM78663, MM78665 or higher, remove cone shafts from service prior to accumulating 9,300 CSN and replace with serviceable parts.

(2) With compressor cone shafts P/N 23050728, or P/N 23070729 having other than the S/N's listed in paragraph (d)(1) of this AD, remove cone shafts from service prior to accumulating 3,500 CSN and replace with serviceable parts.

(e) For Rolls-Royce Corporation AE 3007A1P engines:

(1) With compressor cone shafts P/N 23070729, SN MM78599, MM78615, MM78632, MM78650, MM78651, MM78652, MM78653, MM78654, MM78655, MM78656, MM78657, MM78658, MM78659, MM78660, MM78661, MM78662, MM78663, MM78665 or higher, remove cone shafts from service prior to accumulating 7,300 CSN and replace with serviceable parts.

(2) With compressor cone shafts P/N 23050728, or P/N 23070729 having other than the SN's listed in paragraph (e)(1) of this AD, remove cone shafts from service prior to accumulating 2,400 CSN and replace with serviceable parts.

New Life Limits

(f) Paragraphs (a), (b), (c), (d) and (e) of this AD establish new, lower life limits for cone shafts, P/N's 23050728 and 23070729.

(g) Except for the provisions of paragraph (h) of this AD, no cone shafts, P/Ns 23050728 and 23070729, may remain in service exceeding the life limits established in paragraphs (a), (b), (c), (d) and (e) of this AD.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

Special Flight Permits

(i) Special flight permits may be issued in accordance §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a

location where the requirements of this AD can be done.

Effective Date

(j) This amendment becomes effective on January 23, 2002.

Issued in Burlington, Massachusetts, on December 7, 2001.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 01–30952 Filed 12–18–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 98N–0583]

Exports: Notification and Recordkeeping Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule that establishes the notification and recordkeeping requirements for persons exporting human drugs, biological products, devices, animal drugs, food, and cosmetics that may not be marketed or sold in the United States. These regulations implement recent changes in the statutory requirements applicable to certain exports, and also codify recordkeeping requirements for exports of products that cannot be marketed or sold in the United States generally.

DATES: This rule is effective March 19, 2002.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy, Planning, and Legislation (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of April 2, 1999 (64 FR 15994), FDA published a proposed rule to establish notification and recordkeeping requirements for products exported under section 801 or 802 of the Federal Food, Drug, or Cosmetic Act (the act) (21 U.S.C. 381 or 382, respectively) or section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262), as amended by the FDA Export Reform and Enhancement Act (Public Law 104–134, as amended by Public Law 104–180).

The FDA Export Reform and Enhancement Act significantly changed and simplified the export requirements for unapproved human drugs, biological products, devices, and animal drugs. For example, before the law was enacted, most exports of unapproved new drugs could only be made to the 21 countries then identified in section 802 of the act, and these exports were subject to numerous restrictions. The FDA Export Reform and Enhancement Act amended section 802 of the act to allow, among other things, the export of unapproved new human drugs to any country in the world if the drug complies with the laws of the importing country and has valid marketing authorization from any of the following countries: Australia, Canada, Israel, Japan, New Zealand, Switzerland, South Africa, and the countries in the European Union (EU) and the European Economic Area (EEA) and certain other requirements are met (see section 802(b)(1)(A) of the act). Currently, the EU countries are Austria, Belgium, Denmark, Germany, Greece, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom. The EEA countries are the EU countries, Iceland, Liechtenstein, and Norway. (The list of countries will expand automatically if any country accedes to the EU or becomes a member of the EEA.) This provision of section 802 of the act also applies to the export of certain devices that cannot be sold or marketed in the United States.

The FDA Export Reform and Enhancement Act also established recordkeeping and notification requirements. Section 802(g) of the act requires an exporter of a drug or device under section 802(b)(1)(A) of the act to provide a ''simple notification'' to the agency ''identifying the drug or device when the exporter first begins to export such drug or device'' to any of the 25 countries identified in section 802(b)(1)(A) of the act. For exports to other, nonlisted countries, section 802(g) of the act requires the exporter to provide a simple notification ''identifying the drug or device and the country to which such drug or device is being exported.'' This section also requires persons exporting drugs or devices under any provision of section 802 of the act to ''maintain records of all drugs or devices exported and the countries to which they were exported.''

Certain aspects of the proposed rule raised numerous issues. As a result, in the **Federal Register** of June 17, 1999 (64 FR 32442), FDA extended the comment period from June 16, 1999, to July 16, 1999.

FDA received 18 comments on the proposed rule. In addition, the agency received several comments on the export notification and recordkeeping discussions in its draft export guidance document which was published in the **Federal Register** on June 12, 1998 (63 FR 32219, FDA docket number 98D–0307). Drug manufacturers, device manufacturers, device exporters, and food, drug, and device trade associations submitted comments. An animal drug trade association and a biological product company also submitted comments. Because FDA wrote both the proposed rule and the guidance document contemporaneously, the agency considered comments submitted on the proposed rule and related comments submitted on the draft export guidance document when it prepared this final rule.

II. Comments on the Proposed Rule, Including Related Comments Submitted to the Draft Guidance Document

Most comments focused on specific provisions in the proposed rule. However, others made general comments about FDA's export authority or the need for any regulations or addressed other export issues that were not directly related to the proposed rule. A description of the comments, and FDA's responses, follows.

A. General Comments

(Comment 1) Several comments claimed that the proposal was contrary to the letter or intent of the FDA Export Reform and Enhancement Act because it would create ''unnecessary,'' ''cumbersome,'' or ''burdensome'' requirements that would make it more difficult or time-consuming to export products from the United States, place U.S. firms at a competitive disadvantage in global markets, force firms to relocate overseas, or result in lost profits. Some comments said FDA must withdraw the proposal, although others said the agency should significantly revise the proposal to reduce its requirements.

FDA recognizes that the FDA Export Reform and Enhancement Act was designed to facilitate exports of unapproved products from the United States and, through the draft guidance document, proposed rules, and other contacts with individual firms, the agency worked to reduce or eliminate export requirements and facilitate exports. FDA drafted the proposed rule to implement the notification and recordkeeping requirements in section 802 of the act and to establish a single, consistent agency position regarding the types of records it would examine to determine compliance with section

801(e)(1) of the act. In general, FDA sought to establish recordkeeping requirements to inform firms about the types of records that would demonstrate a firm's compliance with the act and to ensure that the records could be linked to a specific export. For example, an export record stating only that ''product X was exported'' would be almost useless if multiple versions of the product exist (because neither FDA nor the exporter would be able to tell what specific version of the product was exported) or if the product was exported to multiple countries (because neither FDA nor the exporter would be able to alert foreign government officials if a problem developed or such communications became necessary).

FDA disagrees, therefore, with those comments asserting that the proposed rule was ''burdensome'' or ''unnecessary.'' The agency's interest is to implement sections 801(e)(1) and 802 of the act and section 351(h) of the PHS Act in a consistent, uniform manner that will generate notifications and records that will be useful in determining compliance with the act and will have some value both to the exporter and the agency. Furthermore, as discussed later in this document, FDA has, in response to other comments, revised or eliminated various requirements. These changes to the final rule should make it easier for exporters to comply with the act.

(Comment 2) Several comments argued that FDA lacks authority to issue any regulations pertaining to exports. One comment conceded that the act imposes substantive requirements and that FDA can exercise its enforcement authority if a manufacturer violates the export requirements, but argued that FDA does not have ''carte blanche'' to require exporters to retain records to defend against a possible FDA enforcement action before the agency alleges that a violation has occurred. The comment added that FDA cannot require records as a substantive requirement so that failure to maintain records would be the basis for regulatory action. Another comment asserted that FDA had failed to show that Congress expected FDA to impose new recordkeeping and reporting requirements on industry or how the requirements would be important in fulfilling FDA's statutory obligations.

Another comment simply stated that the act does not require regulations or the recordkeeping described in the proposed rule.

Other comments cited remarks by one legislator to emphasize that no export restrictions would be preferable.

FDA's authority to issue regulations stems from section 701(a) and (b) of the act (21 U.S.C. 371(a) and (b)). Section 701(a) of the act gives the agency authority to issue regulations for the efficient enforcement of the act unless an exception exists, and section 701(b) of the act specifically authorizes the Departments of Health and Human Services (DHHS) and the Treasury to jointly prescribe and for the DHHS to promulgate regulations for the efficient enforcement of section 801 of the act. Given these provisions of the act, FDA clearly has the authority to promulgate regulations concerning exports and to issue regulations for the efficient enforcement of sections 801 and 802 of the act.

Additional discussion of FDA's authority to issue regulations for the efficient enforcement of section 351(h) of the PHS Act is included in the responses to the comments to § 1.101(c) (21 CFR 1.101(c)) (see section II. D below).

Records enable a person to show, and for FDA to verify, that the person has complied with its legal obligations. The FDA Export Reform and Enhancement Act, with very few exceptions, eliminated any need for prior FDA approval of an export, so determining whether a person has complied with the act must depend on an examination of records. If no records can be required, a firm cannot demonstrate that it met all applicable export requirements, and FDA would be unable to verify such compliance.

Further, section 802(g) of the act clearly states, in part, that, ''Any exporter of a drug or device *shall maintain records* of all drugs or devices exported and the countries to which they were exported'' (emphasis added). The most straightforward interpretation of this provision is that persons exporting drugs or devices under section 802 of the act must keep records on the exported product and the foreign countries receiving the product. As a result, the final rule, at § 1.101(e), describes the types of information that would demonstrate compliance with section 802(g) of the act. Failure to keep the records required by section 802(g) of the act would be a violation of section 802 of the act. As a result, the product would no longer have section 802 of the act's exemption from the applicable misbranding, adulteration, approval, and prohibited act provisions of the act. The product and/or the person responsible could be subject to enforcement action under the act.

FDA acknowledges that one legislator, in his remarks accompanying the passage of the FDA Export Reform and Enhancement Act, indicated a desire to have no export requirements at all. Nevertheless, the FDA Export Reform and Enhancement Act did contain requirements for exports, and one cannot reasonably argue that Congress, in enacting those requirements, intended them to be ignored, rendered meaningless, or made unenforceable. When interpreting legislation, it is a well-settled principle that, ''Absent clear congressional intent to the contrary, we will assume the legislature did not intend to pass vain or meaningless legislation'' (*Coyne & Delany* v. *Blue Cross & Blue Shield of Virginia*, 102 F.3d 712, 715 (4th Cir. 1996); see also *Halverson* v. *Slater*, 129 F.3d 180, 185 (D.C. Cir. 1997) (Congress cannot be presumed to do a futile thing)).

(Comment 3) Two comments argued that the proposal was deficient or had to be withdrawn because FDA had not shown how the proposal protects the public health of U.S. citizens or foreign citizens or benefits consumers.

FDA disagrees with the comments. The rule is intended to implement sections 801(e) and 802(g) of the act and section 351(h) of the PHS Act by describing the types of records that should be kept in order to demonstrate that the export complied with the act and by describing the contents of the simple notification, which must be sent to FDA for certain exports under section 802 of the act. None of these provisions requires a demonstration of the public health benefits for United States or foreign citizens as a prerequisite to rulemaking. Thus, a preamble discussion concerning public health benefits to U.S. citizens or foreign citizens or possible congressional expectations for a regulation is unnecessary.

Nevertheless, the act and, by extension, the final rule indirectly benefits the public health in the United States and in foreign countries. For example, sections 801(e) and 802 of the act permit exports of products that are not approved for use in the United States. (If the products were approved for use and otherwise in compliance with the act's requirements for marketing and sale in the United States, they would not be subject to the export provisions of the act.) Consequently, to the extent that records can show that a product not approved for use in the United States. was, in fact, exported, there would be no U.S. public health concern that a product whose safety or effectiveness has not been established had entered domestic commerce.

As another example, section 351(h) of the PHS Act states, in part, that exports

of a partially processed biological product must conform with current good manufacturing practice (CGMP) requirements. CGMP requirements are, in part, intended to ensure that the product complies with certain adulteration and misbranding provisions. Obviously, consumers benefit by not receiving products that do not comply with these requirements. The final rule, at § 1.101(c)(2), reflects the CGMP requirement adopted by Congress by requiring records demonstrating that the partially processed biological product was manufactured in conformity with CGMPs. If FDA could not require exporting firms to keep CGMP records, there would be no way to demonstrate or to verify that the partially processed biological product met CGMPs, was not contaminated, was correctly labeled and stored, and was otherwise in compliance with section 351(h) of the PHS Act and entitled to the provision's exemption from the requirements of the PHS Act and the act. This demonstration clearly benefits the public health.

(Comment 4) One comment said that the present system is ''working well'' so new regulations are unnecessary. Other comments said the statute was sufficiently clear so no regulations are needed. Another comment asked that foods be excluded from the rule; the comment said, in part, that FDA did not understand the global food market or recognize congressional intent in adopting the FDA Export Reform and Enhancement Act. (The comment also made specific statements against individual provisions in the proposed rule and other claims; FDA addresses those comments elsewhere in this preamble.)

FDA disagrees with the comments. The FDA Export Reform and Enhancement Act affected regulated industries differently. For example, for foods, no significant changes in the export authority occurred, whereas for drugs and devices, the new export provisions offered new authorities for exporting investigational products, products approved by certain foreign countries, and products intended to ''fill the pipeline'' while awaiting approval in a foreign country.

As another example, before the enactment of the FDA Export Reform and Enhancement Act, unapproved new animal drugs were subject to the export requirements in section 802 of the act, and then-section 801(e) of the act did not permit the exportation of animal drugs that were ''unsafe'' within the meaning of section 512 of the act (21 U.S.C. 360b). After the enactment of the FDA Export Reform and Enhancement Act, animal drugs are excluded from section 802 of the act and, except for ''banned'' animal drugs which cannot be exported, now can be exported if they comply with the export requirements in section 801(e)(1) of the act.

Yet, while the new export provisions affected regulated industries differently, certain statutory requirements (such as compliance with section 801(e)(1) of the act) are common to all exports. Other statutory requirements, particularly those in section 802 of the act, are common to drugs and devices, or to drugs, biological products, and devices. In cases where a particular statutory requirement applied to more than one type of product, the agency decided that its interpretation and implementation of that statutory requirement should also be the same, regardless of the product involved. In other words, the rule implementing section 802(g) of the act should be the same for drug exporters as it is for device exporters because both are subject to section 802(g) of the act. Similarly, the requirements in section 801(e)(1) of the act are incorporated by referring to section 802(f) of the act and section 351(h) of the PHS Act, and continue to operate as a freestanding export provision for foods, cosmetics, certain drugs, and devices. The interpretation of section 801(e)(1) of the act should be consistent regardless of the product involved.

So, while the agency's implementation of the export provisions might have been sufficiently clear to some individuals and ''working well'' for certain industries in certain cases, the absence of a single, consistent interpretation of those statutory provisions created the possibility that different FDA centers would implement the same provisions of the act differently. The agency, therefore, formed a multi-center and multi-office group to develop FDA's policies and interpretations for the FDA Export Reform and Enhancement Act. The draft guidance document (which appeared in the **Federal Register** of June 12, 1998 (63 FR 32219)), the proposed ''import for export'' rule (which appeared in the **Federal Register** on November 24, 1998 (63 FR 64930)), and this rule represent the consensus positions and interpretations of the agency's centers and offices.

In short, a rule will help ensure that the export requirements ''work well'' for all, rather than some, regulated industries and that they work the same way for all regulated industries.

As for the comment requesting that FDA exclude food products from the rule, FDA declines to adopt the comment's suggestion. Section 801(e)(1) of the act clearly and unequivocally applies to food exports, so, absent a compelling reason that would warrant separate or different export regulations for food, FDA declines to exclude food products from the final rule.

(Comment 5) One comment said that the proposed rule contained the ''same objectionable provisions'' that were in the draft guidance document on exports.

While the agency disagrees with the comment's characterization of the rule, the proposed rule and guidance document contain the same concepts because FDA prepared the draft guidance document and its export-related proposed rules simultaneously. However, the administrative clearance and publication procedures and statutory requirements that apply to guidance documents are much simpler than those that apply to proposed rules. Consequently, the proposed rules appeared several months after FDA had published the draft guidance document in the **Federal Register**. In preparing this final rule, FDA reviewed both the comments submitted to the proposed rule and relevant comments submitted to the draft guidance document.

(Comment 6) One comment accused the agency of engaging in ''regulatory imperialism'' that is ''neither desired nor needed by other countries'' and that the rule reflected what it called ''FDA's continued belief that the agency is not simply the public-health agency for the United States, but for the entire world.''

FDA disagrees with the comment. The rule implements parts of sections 801(e)(1) and 802 of the act and section 351(h) of the PHS Act. These provisions do not require, or expect, FDA to be a public health agency ''for the entire world,'' but the act and section 351(h) of the PHS Act do establish requirements on exports of products that cannot be legally marketed or sold under the act in the United States, and FDA is charged with enforcing the act and section 351 of the PHS Act. The final rule, as stated earlier, creates a single, uniform interpretation for certain export requirements by describing the types of records the agency would examine in order to determine whether a person complied with the law and by describing the content of the notification, if required by the act, to be sent to FDA.

(Comment 7) Two comments involved investigational products. One comment said the proposal would make it more difficult for U.S. firms to conduct foreign clinical trials for drug and biological products. The other comment said the proposal fails to recognize that food samples are often exported for

testing or for product research and development. This comment said these food products are tested on site under controlled conditions or used for demonstration purposes and are never intended for human consumption in foreign countries. The comment added that these food products are never ''approved'' by foreign governments because they are not intended for retail markets, and said that the proposal overlooked the need for global market development.

For clinical investigations involving human drugs and biological products, the FDA Export Reform and Enhancement Act created several avenues for exporting such products. First, if the drug or biological product has been approved for marketing in any of the countries identified in section 802(b)(1) of the act (the so-called ''listed countries''), the product may be shipped to any country for any purpose; this would include investigational use, and the export would be subject to the rule's notification and recordkeeping requirements.

Second, if the drug or biological product is exported for investigational use in any listed country and is not approved in any listed country, section 802(c) of the act authorizes its export. These exports are not subject to the notification requirement in section 802(g) of the act, but are subject to section 801(e)(1) of the act and to certain other requirements in section 802 of the act. Most drugs and biological products exported for investigational use would probably be subject to this provision of the act and § 1.101(b) and (g).

Third, the clinical investigation could be conducted under an investigational new drug application (IND). In these cases, only the IND requirements at part 312 (21 CFR part 312) would apply.

Fourth, the person could seek permission to export the drug or biological product, without obtaining an IND, under § 312.110. This program, known as the ''312 program,'' pre-dates the FDA Export Reform and Enhancement Act and allows exports for investigational use.

FDA is preparing a proposed rule that would address exports of drugs and biological products for investigational use and also streamline the requirements for the ''312 program.'' Additionally, FDA has revised § 1.101(b)(2) and other parts of this rule to simplify the requirements for demonstrating compliance with section 801(e)(1) of the act. These revisions significantly change the records required for demonstrating compliance with section 801(e)(1) of the act and are discussed later in this document.

As for foods exported for investigational or research uses, the act does not contain any special provisions for such products. There is no apparent legal basis to distinguish them from other food exports.

However, section 801(e)(1)(B) of the act only requires that the product intended for export be ''not in conflict'' with the foreign country's laws. This is considerably different—and far less restrictive than requiring that the exported product be ''approved'' in the foreign country. Market authorization is relevant only for drugs and devices exported under section 802(b)(1) of the act, because that provision of the act allows exports of unapproved drugs or devices if they have received valid marketing authorization from any listed country, and comply with the other applicable requirements of section 802 of the act. Thus, in the food testing and research and development example cited by the comment, the export would comply with section 801(e)(1)(B) of the act if such activities do not conflict with the laws of the importing country. Additionally, as stated earlier, revised § 1.101(b)(2) greatly simplifies the types of records needed to show that the product is not in conflict with the foreign country's laws.

(Comment 8) One comment objected to notifying FDA at all if a device is International Organization for Standardization (ISO)–9001 certified or has received approval from a notified body so that it may be commercially marketed in the EU. The comment said the Conformite European (CE) mark should exempt the device from notification and said that small countries will find it in their best interests to accept the CE mark as their acceptance standard.

FDA declines to exempt CE-marked or ISO–9001 certified devices from the notification requirement. The act requires notification for drugs and devices exported under section 802(b) of the act. The act does not exempt devices that bear a CE mark or meet ISO–9001 standards from the act's export requirements. The agency notes that such devices may qualify for export under section 801(e)(1) of the act. In such instances, no notification would be required as long as the export complies with section 801(e)(1) of the act.

As for the comment's assertion that small countries should accept the CE mark, such matters are outside the scope of this rule. FDA cannot require other countries to accept a CE mark.

(Comment 9) The preamble to the proposed rule described the requirements in section 802(f) of the act. It noted that the act prohibits exports of a drug or device if the product is the subject of a determination by FDA or by the U.S. Department of Agriculture (USDA) that the probability of reimportation of the exported drug or device would present an imminent hazard to the public health and safety of the United States. The preamble to the proposed rule noted that veterinary biological products are subject to USDA jurisdiction (64 FR 15944, col. 3). One comment requested that FDA remove the reference to veterinary biological products.

The statement in the preamble to the proposed rule accurately described the USDA's jurisdiction. However, the reference to veterinary biological products was inappropriate because sections 801(e)(1) and 802 of the act apply only to FDA-regulated products. No changes to the final rule are necessary, though, because the reference to veterinary biological products appeared only in the preamble to the proposed rule.

(Comment 10) Two comments said the rule failed to address or to distinguish between items that are imported as components or ingredients that are used in products destined for export and products that are manufactured solely for export purposes.

In the **Federal Register** of November 24, 1998 (63 FR 64930), FDA published a proposed rule regarding ''import for export'' under section 801(d) of the act. The proposal described the reporting and recordkeeping requirements for articles that are imported into the United States and are later further processed or incorporated into items for export.

The import for export proposal, however, focused on requirements pertaining to the imported article, whereas this final rule pertains to the notification and recordkeeping requirements for exported products. In other words, the import for export provision in section 801(d) of the act does not relieve ''import for export'' products from satisfying the export requirements in sections 801(e) and 802 of the act or section 351(h) of the PHS Act. Thus, one should read this final rule in conjunction with the import for export proposal. FDA intends to finalize the import for export proposal in the near future.

B. Scope (Section 1.101(a))

Section 1.101(a) would describe the provision's scope as covering notifications and records required for human drug, biological product, device,

animal drug, food, and cosmetic exports under sections 801 or 802 of the act or section 351 of the PHS Act.

(Comment 11) One comment asked if a product meeting all applicable marketing requirements in the United States, but labeled in a foreign language and intended for the same uses as those approved by FDA, would be exempt from the rule.

FDA considers a product which is labeled solely in a foreign language and whose foreign-language labeling has not been approved by FDA (where such FDA approval of labeling is required) to be an unapproved product and subject to the act's approval requirements. FDA approval, in general, includes approval of a product's labeling (see, e.g., sections 505(b)(1)(F), (d)(5), and (d)(7); 512(a)(1)(B), (a)(2)(C), and (b)(1)(F); and 515(c)(1)(F), and (d)(2) of the act (21 U.S.C. 355(b)(1)(F), (d)(5), and (d)(7); 360b(a)(1)(B), (a)(2)(C), and (b)(1)(F); and 360e(c)(1)(F), and (d)(2))). Thus, if FDA has not reviewed or approved the foreign-language label, the product is unapproved and would not be exempt from this rule, even if an identical, FDA-approved product with approved labeling exists.

For information regarding the exportation of products legally marketed in the United States that are accompanied by FDA-approved labeling, please see comment 28.

(Comment 12) One comment objected to the rule's scope, saying that it would cover products that foreign countries might regulate differently from FDA. The comment gave an example of patient [disposal] washcloths, which would be medical devices in the United States, but would be cosmetics in Brazil. The comment said FDA should concern itself with compliance with FDA requirements for domestic shipments.

FDA disagrees with the comment. The most logical interpretation of the act is to have FDA regulate products, and determine whether products are exempt from requirements applicable to products marketed, distributed, or sold in the United States because they qualify for export under sections 801(e) or 802 of the act or section 351(h) of the PHS Act, according to their classification or type in the United States. Thus, a product that would be considered a device in the United States remains a device under the export provisions even though a foreign country might regulate it differently or might not regulate it at all. It would be both inefficient and resource-intensive for exporters and FDA to apply the export requirements based on the product category in which a particular foreign country regulates the product. Moreover, such an approach is inconsistent with the structure of the act's export provisions. The export provisions are a means by which an exporter can ship products that would otherwise be subject to the act's domestic provisions. The purposes underlying the export provisions would be undermined if a product could qualify for export under the rules applicable to the product category of the importing country rather than based on how the product is regulated in the United States.

(Comment 13) One comment said the proposal failed to address specific categories of food products. The comment said that food additives and dietary supplements are ''foods'' and subject to section 801(e)(1) of the act, but said color additives are not foods, drugs, or any other product mentioned in proposed § 1.101(a). The comment asked if color additives are exempt from the rule.

The act's definitions of ''food,'' ''drug,'' and ''cosmetic'' include components of such products (see section 201(f)(3), (g)(1)(D), and (i)(2) of the act (21 U.S.C. 321(f)(3), (g)(1)(D), and (i)(2)). Section 201(t)(1)(B) of the act, in general, defines a ''color additive'' as a material that, when added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable of imparting color. Most color additives would be components of a food, drug, or cosmetic and, as a result, be subject to the act's export requirements for foods, drugs, or cosmetics. Only those color additives that are not classified as a food, drug, or cosmetic ''component'' fall outside sections 801(e) and 802 of the act. In such circumstances, if the color additive cannot be legally marketed, distributed, or sold in the United States because it does not comply with the act's requirements for color additives, it may not be exported.

(Comment 14) FDA, on its own initiative, has replaced the word ''biologic'' or ''biologics'' with ''biological product'' or ''biological products'' throughout the rule. This change has no substantive effect and is intended only to use the term used in the PHS Act for these products.

C. Recordkeeping Requirements for Human Drugs, Biological Products, Devices, Animal Drugs, Foods, and Cosmetics Exported Under or Subject to Section 801(e)(1) of the Act (Section 1.101(b))

1. General Remarks

Section 1.101(b) would establish the recordkeeping requirements for human drugs, biological products, devices, animal drugs, foods, and cosmetics exported under or subject to section 801(e)(1) of the act.

(Comment 15) Several comments challenged FDA's authority to issue any recordkeeping regulations for section 801(e)(1) of the act. Two comments claimed that the act only requires records under section 802(g) of the act, so FDA cannot issue recordkeeping requirements for section 801(e)(1) of the act. One comment added that the proposed recordkeeping requirements went ''far beyond'' the ''simple recordkeeping'' requirements specified in the act. Two comments argued that the act did not require records or prescribe what records are to be kept, although one comment acknowledged that companies should keep records to demonstrate compliance with the act. According to these comments, companies have the discretion to keep any records they wish to demonstrate compliance with section 801(e)(1) of the act.

FDA has ample legal authority to require records. Section 701(b) of the act provides the principal legal basis for the recordkeeping requirements in § 1.101(b). Section 1.101(b) reflects the basic export requirements in section 801(e)(1) of the act that apply to all exports under sections 801(e) and 802 of the act, regardless of whether the product is a food, human or animal drug, biological product, device, or cosmetic. The agency drafted this provision to provide a single, consistent interpretation of requirements in section 801(e)(1) of the act to both industry and to the agency's own components. This should result in less confusion and fewer disagreements as to whether a particular document adequately demonstrates compliance with section 801(e)(1) of the act (which would occur if no regulation existed and firms had total discretion over what records to keep). FDA has, however, significantly revised § 1.101(b) in response to the comments (by shortening the recordkeeping period and by clarifying the types of records needed to show that the export meets the foreign purchaser's specifications or does not conflict with foreign laws), and discusses those changes later in this document.

For the records required in § 1.101(e), section 701(a) of the act provides rulemaking authority for the efficient enforcement of the act, and this authority is independent of the recordkeeping requirement in section 802(g) of the act. FDA further notes that, contrary to one comment's claim, section 802(g) of the act does not refer to ''simple recordkeeping.'' Instead,

section 802(g) of the act refers to a ''simple notification'' that is to be sent to FDA, and requires drug and device exporters to ''maintain records of all drugs or devices exported and the countries to which they were exported.''

(Comment 16) One comment argued that the proposal contains requirements and recommendations that are irrelevant or inappropriate to specific products, such as bulk agricultural commodities. The comment asked FDA to exclude foods from the rule.

FDA declines to exclude foods from the rule. Section 801(e)(1) of the act specifically includes foods, so it is more practical and appropriate to include foods as part of this rule so that the rule applies equally to all products subject to section 801(e)(1) of the act.

Section 801(e)(1) of the act also does not distinguish between types of food, so it would be inappropriate to create exemptions or exceptions for specific food products. FDA has, however, revised some requirements in § 1.101(b) to make it easier to demonstrate compliance with section 801(e)(1) of the act. FDA is unable to respond further to the comment because it did not identify which requirements were supposedly irrelevant or inappropriate or explain why they were irrelevant or inappropriate.

(Comment 17) Proposed § 1.101(b)(1) would require records to be kept at least 5 years after the date of exportation and made available to FDA for review and copying.

Several comments protested that the 5-year period was excessive. One comment claimed that food manufacturers do not even keep records regarding foreign regulatory requirements and that it would be unrealistic and unacceptable to expect them to do so. Two comments suggested that the retention period be 2 years, while another comment suggested that, for drugs, the period be 1 year after the product's expiration date.

The agency has revised the rule to make the record retention period coincide with the CGMP or quality systems (QS) regulations applicable to the product. So, for example, the CGMP record retention period would apply to drug exports, and the QS regulation record retention period would apply to device exports. FDA decided to use CGMP and QS regulation record retention periods because most records described in § 1.101 would be contained in a company's CGMP or QS regulation records. As a result, firms should find it easier to maintain their export records in the same manner and for the same period of time as their CGMP or QS regulation records.

For food and cosmetic exports, the food CGMP regulations do not contain a recordkeeping requirement, and there is no CGMP regulation for cosmetics. Therefore, because the food CGMP and cosmetic regulations do not require records, FDA has revised § 1.101(b)(1) to require records for food and cosmetic exports to be kept for 3 years after the date of exportation. The 3-year period is consistent with the CGMP record retention period for drugs (see 21 CFR 211.180(a)).

As for the comment claiming that food manufacturers do not keep records of foreign regulatory requirements, neither the proposed nor final rules required them to do so. Section 1.101(b)(2) requires records demonstrating that the product does not conflict with the laws of the importing country. The final rule states that such records can consist of either: (1) A letter from an appropriate foreign government agency, department, or body stating that the product has marketing approval from the foreign government or does not conflict with the foreign government's laws; or (2) a notarized certification by a responsible company official in the United States that the product does not conflict with the importing country's laws and includes a statement acknowledging that he or she is subject to 18 U.S.C. 1001. Thus, showing that the export does not conflict with the foreign country's laws does not require a person to keep records regarding foreign regulatory requirements.

(Comment 18) One comment argued that the recordkeeping obligations do not operate until a firm begins to export a product.

FDA disagrees with the comment. Although the rule does not specify when a firm should begin keeping export records, FDA expects firms to begin creating and keeping records before they export a product under sections 801(e) or 802 of the act or section 351(h) of the PHS Act. For example, to show whether the export meets the foreign purchaser's specifications (as required by section 801(e)(1)(A) of the act), an exporter would keep a copy of the incoming purchase order showing which items the foreign purchaser wanted. It would be illogical for the exporter to ask the foreign purchaser to provide a purchase order when the exporter ships or after the exporter has shipped the products to the foreign purchaser or to start keeping such records after he or she has exported the product.

In other words, a prudent firm should know whether exports are permitted or whether the export meets various obligations under the act or the PHS Act before the firm actually exports the product. Yet, even in the absence of this requirement, most firms would have the foreign purchaser's specifications before they export the product because they would want to ensure that they are manufacturing and exporting the correct item and to reassure the foreign purchaser that the exported item meets the purchaser's needs or expectations. Moreover, for purposes of the act, if a product does not comply with the applicable requirements for domestic marketing, distribution, and sale, and the manufacturer lacks evidence that the product is intended for export and meets the requirements of an applicable export exemption (i.e., sections 801 or 802 of the act or section 351(h) of the PHS Act), the product would be subject to enforcement action for violating the act.

2. Foreign Purchaser's Specifications (Section 1.101(b)(1))

To demonstrate that the exported product meets the foreign purchaser's specifications, § 1.101(b)(1) would require records describing or listing the product specifications requested by the foreign purchaser. The proposal indicated such records could include details about the product (e.g., dosage strength, dosage form, purity, quality, operating parameters, composition) and any manufacturing specifications requested by the foreign purchaser (e.g., type of sterilization process to be used, compliance with a particular manufacturing standard).

(Comment 19) Most comments submitted in response to proposed § 1.101(b)(1) interpreted the provision as requiring extremely detailed product specifications and protested the level of detail that they believed the rule required. For example, some comments said that in vitro diagnostic devices are not manufactured to unique specifications and are instead sold to the general laboratory or scientific community. These comments said package inserts describing product specifications, product labeling, or some indication that the in vitro diagnostic device met design criteria should be acceptable.

Other comments said that, for food products or medical devices, contracts or purchase orders between exporters and foreign purchasers should suffice. One comment added that for devices FDA should not require specifications to be in English; the comment said requiring foreign purchasers to draft original specifications in English would be cumbersome and that product labeling is used worldwide as the basis for product performance characteristics.

One comment from a trade association for human drug manufacturers said CGMP records should suffice, but also claimed that the act does not authorize FDA to require any records. In contrast, another comment said that some foreign purchasers have limited requirements and may not require detailed product specifications.

One comment said that recipes, manufacturing specifications, and processes are proprietary information protected under ''international agreements'' and should not be available to FDA for review and copying. The comment accused FDA of trying to obtain proprietary information with the intent to share such information with foreign entities.

Only one comment stated that the records described in proposed § 1.101(b)(1) would not present any problem. The comment explained that a manufacturer would require a detailed specification for the custom manufacture of any product that is not regularly manufactured or sold in the United States.

FDA believes that many comments misinterpreted the rule. FDA's principal interest is to link a record to a particular export to verify that the exported product met the foreign purchaser's specifications. For example, if the foreign purchaser sought 5,000 bottles of drug X tablets, with each tablet at a 50 milligram (mg) dose, FDA would look for records to show that a particular shipment of drug X to the foreign purchaser consisted of 5,000 bottles of 50 mg of drug X tablets. Records stating only that drug X was shipped to the foreign purchaser would not be satisfactory because they would provide no information regarding the foreign purchaser's specifications or how the export shipment met those specifications.

The final rule does not prescribe any particular degree of detail in the foreign purchaser's specifications. The agency has revised § 1.101(b)(1) to clarify that the records need only contain sufficient detail to match the foreign purchaser's specifications to a particular export. If CGMP records contain information on the foreign purchaser's specifications, they may be sufficient under § 1.101(b)(1).

As for translations, the specifications should be translated, if necessary, to facilitate a determination as to whether the exported product meets the foreign purchaser's specifications. The agency has no preference whether the foreign purchaser or the U.S. manufacturer or exporter does the translation. However, the U.S. manufacturer or exporter should know whether the exported product meets the foreign purchaser's specifications, so it is reasonable to expect that the U.S. manufacturer or exporter would understand the foreign purchaser's specifications and be able to communicate those specifications in English.

FDA disagrees with the comment that claimed that FDA wants to obtain proprietary information in order to transmit that information to foreign entities. Such claims are totally unfounded. FDA is very conscious of its legal obligations to protect trade secrets and confidential commercial information (see section 301(j) of the act (21 U.S.C. 331(j)), 21 CFR part 20) and has regulations governing communications with foreign governments (see 21 CFR 20.89). Those regulations contain several safeguards, such as sponsor consent, to protect any exchanges of confidential commercial information with foreign governments.

(Comment 20) One comment asked how often foreign purchasers must provide product specifications. The comment explained that specifications are only as detailed as necessary to meet the purchaser's needs, so that if the foreign purchaser changes or amends its specifications, the foreign purchaser should be expected to provide an amendment to the U.S. manufacturer. The comment suggested that FDA interpret the rule to require foreign purchasers to provide complete specifications only with the initial order. If the foreign purchaser subsequently changed the specifications, the foreign purchaser would only provide the changes to the manufacturer (rather than a complete set of specifications). The comment added that batch records would be kept in accordance with existing recordkeeping requirements and would be made available during an inspection.

FDA does not expect complete specifications to accompany every order of the same product. For example, if an exporter signs a contract to ship the same item to a foreign purchaser on a monthly basis, the agency would not expect the exporter to obtain complete specifications for each monthly shipment, but would expect the exporter to have specifications that applied to the initial shipment and records showing that subsequent shipments correspond to the same initial specifications. The agency's principal interest is to link records to specific export shipments to verify that a particular exported product met the foreign purchaser's specifications. The level of detail in the specifications may vary between orders, but the agency expects manufacturers to be able to demonstrate that the exported product met the foreign purchaser's specifications.

3. Not in Conflict With the Foreign Country's Laws (Section 1.101(b)(2))

Proposed § 1.101(b)(2) would require the exporter to maintain documentation that demonstrates that the exported product does not conflict with the importing country's laws. The proposal stated that this would normally consist of a letter from the appropriate foreign government agency, department, or other authorized body stating that the product has marketing approval from the foreign government or does not conflict with that country's laws. The proposal would not consider letters or other documents from nongovernmental bodies or persons, such as company officials or attorneys in the foreign country, to be satisfactory for this purpose.

(Comment 21) Many comments objected strongly to proposed § 1.101(b)(2). In general, most comments said it would be difficult, time-consuming, burdensome, or impossible to obtain a letter from a foreign government. Other comments argued that foreign governments might not regulate the exported product so one could not demonstrate that the product was not in conflict with foreign laws or that foreign governments might not be willing to provide a letter due to disinterest, lack of staff, or a desire to protect domestic industry. A few comments suggested that manufacturers should not be responsible for determining whether a product does not conflict with foreign laws, arguing that importers, purchasers, or distributors in the foreign country should bear that responsibility.

Many comments advocated alternative approaches that would eliminate any need for a letter from the foreign government. Most comments favored a certification, declaration, letter, or memo by a company official in the foreign country, a distributor in the foreign country, by a foreign subsidiary, an attorney (either in the United States or in the foreign country), a notified body (if the export were to Europe or Japan), or a foreign government official, or some combination of these firms or persons. These comments often explained that firms are responsible for meeting local requirements and supported the use of certifications or letters from company officials.

One comment suggested using only contractual documents between the exporter and importer. The comment said previous FDA guidance to the grain handling industry used this approach.

Another comment said a copy of a valid import license should be sufficient because these licenses usually require inspection by the foreign government. The comment explained that a manufacturer will not ship a product if its export costs are significant, and it will not ship a product that does not comply with local requirements because the cost of returning the product would be too great.

One comment said a label stating ''For export only'' should suffice to show that the product does not conflict with the foreign country's laws.

Section 1.101(b)(2) was intended to provide the most reliable indicator that the exported product did not conflict with the foreign country's laws. However, in light of the comments, FDA has revised § 1.101(b)(2) to accept, as an alternative to a letter from the foreign government, a notarized certification from a responsible company official in the United States that the product is not in conflict with the foreign country's laws. The certification must include a statement acknowledging that the responsible company official making the certification is subject to the provisions of 18 U.S.C. 1001. This statutory provision makes it a criminal offense to knowingly and willfully make a false or fraudulent statement, or make or use a false document, in any matter within the jurisdiction of a department or agency of the United States. This statutory provision also makes it a criminal offense to knowingly and willfully falsify, conceal, or cover up by any trick, scheme, or device a material fact in any matter within the jurisdiction of a department or agency of the United States. This revision should address the concerns expressed in most comments and eliminate any potential delays or obstacles in demonstrating compliance with section 801(e)(1)(B) of the act. FDA reserves the authority to request additional documentation demonstrating that the export is not in conflict with the foreign country's laws if questions arise regarding a certification.

FDA declines to amend the rule to accept contracts as evidence that an export is not in conflict with a foreign country's laws. While parties entering contracts usually intend to execute legally binding obligations, they do not necessarily take into account whether the export complies with foreign laws.

(Comment 22) A few comments disputed FDA's authority to require a letter from a foreign government. They noted that a particular legislator considered such a requirement to be objectionable or simply declared that FDA exceeded its legal authority.

As stated earlier, FDA has revised § 1.101(b)(2) to accept certifications from company officials as an alternative to a letter from a foreign government agency.

Additionally, as discussed earlier, FDA has ample legal authority under section 701 of the act to issue regulations for the efficient enforcement of the act.

(Comment 23) One comment interpreted § 1.101(b)(2) as being satisfied if the foreign country had issued an approval letter or published some document indicating that the product was approved.

Copies of approval letters or other government-issued documents indicating government approval are acceptable to show that the product is not in conflict with the foreign country's laws, but, as stated earlier, the final rule also allows firms to provide a certification from a responsible company official that the product is not in conflict with the foreign country's laws. FDA reiterates that section 801(e)(1)(B) of the act does not require the foreign government to ''approve'' the exported product for commercial marketing; it only requires that the export ''not be in conflict'' with the foreign country's laws.

Market authorization from a foreign government is relevant under section 802(b)(1) of the act, which authorizes the export of drugs and devices that have received marketing authorization from a listed country. However, the final rule does not contain any detailed provisions pertaining to the market authorization aspect of section 802(b)(1) of the act.

(Comment 24) Proposed § 1.101(b)(2) also would require the letter from the foreign government to be in English or for the person exporting the article to have an English-language translation. One comment objected to the English-language translation requirement. The comment said World Trade Organization (WTO) notification processes do not require translations and that, for exported food products, English-language translations are not always available or necessary.

Section 1.101(b)(2) accepts certifications from company officials in the United States to show that the export does not conflict with the importing country's laws, and the final rule requires the certification to be in English or for an English-language translation to be available. This should not be objectionable because a U.S. exporter is likely to have a responsible official capable of writing a certification in English.

FDA is not persuaded that WTO notification processes are relevant to the rule because this rule concerns compliance with U.S. law by U.S. companies. Section 801(e)(1)(B) of the act requires the exported food, drug, device, or cosmetic to not be in conflict with the laws of the country to which it is intended for export, and § 1.101(b)(2) describes how a U.S. firm demonstrates compliance with section 801(e)(1)(B) of the act.

(Comment 25) One comment said proposed § 1.101(b)(2) would adversely affect clinical trials conducted outside the United States by affecting the supplies of exported drugs for investigational use.

Because FDA has revised § 1.101(b)(2) to accept certifications as an alternative to a letter from a foreign government, the agency does not anticipate any significant problems or delays in executing the certifications, so there should be no adverse impact on exporting drugs for investigational use. Additionally, FDA intends to issue a proposed rule concerning exports of investigational new drugs. The proposal would describe some new regulatory approaches for exporting investigational new drugs and would streamline existing requirements for such exports.

4. ''For Export Only'' Label (Section 1.101(b)(3))

Proposed § 1.101(b)(3) would require the records to include copies of any labels or labeling statements, placed on the shipping packages, that show that the packages are intended for export. The proposal indicated that statements such as ''For export only'' may be sufficient for this purpose.

(Comment 26) Two comments said that raw or processed agricultural commodities cannot be labeled. The comments said that FDA should accept a statement on the bill of lading, export declaration, or other shipping document. One comment suggested that the label, alone, should be sufficient and that FDA should not require firms to show that the export does not conflict with the foreign country's laws.

FDA agrees and has revised the rule to permit the statement to be attached to a bill of lading, export declaration, or other document accompanying the exported product if the product, as it is ordinarily shipped, cannot be labeled.

As for the comment's statement that FDA should not require firms to show that an export does not conflict with a foreign country's laws, FDA points out that section 801(e)(1)(B) of the act expressly requires that a food, drug, device, or cosmetic intended for export to be ''not in conflict with the laws of

the country to which it is intended for export.'' If a product intended for export fails to comply with section 801(e)(1)(B) of the act, the product may be considered to be adulterated or misbranded, and section 301(a) of the act prohibits the introduction or delivery for introduction into interstate commerce of any adulterated or misbranded food, drug, device, or cosmetic.

5. ''Not Sold or Offered for Sale in the United States'' (Section 1.101(b)(4))

Proposed § 1.101(b)(4) would require records showing that the product is not sold or offered for sale in the United States. The preamble to the proposal said that these records could pertain to the product, its labeling, and similar products sold in the United States. The idea was to show that the exported product, when compared to those sold in the United States, was different from products sold domestically.

(Comment 27) Several comments objected to the proposed requirement, arguing that the act does not require any records or labeling to show that the exported product is not sold or offered for sale in the United States.

In contrast, other comments stated that it is difficult to assemble records to ''prove a negative,'' namely that a particular product is not sold or offered for sale in the United States, particularly when a company does not sell a similar product in the United States or only exports products. Some comments suggested that FDA accept copies of shipping records, product labeling, price lists or catalogs, product listings submitted to FDA, or certifications from the exporter. Most comments recommended that the labeling statement in § 1.101(b)(3)—that the product is ''For export only''—be acceptable, although some would add a product label stating, ''Not for sale in the United States.'' Two comments said records relating to the production, destruction, and export of products or showing how exported products are segregated from those sold in the United States should be acceptable.

After further consideration, FDA agrees that it would be difficult and impractical to require records of products sold domestically, product labels, or similar information in order to demonstrate that a particular export is ''not sold'' in the United States. The agency has revised the rule to state that production and shipping records relating to the exported product will be sufficient and that promotional material will be helpful in determining whether a product is ''offered for sale'' in the United States. The agency notes that information concerning products sold or offered for sale in the United States that are similar to an exported product may be used by the agency in determining compliance with section 801(e)(1) of the act. The final rule does not require an exporter to retain records concerning similar products sold or offered for sale in the United States, but other provisions in the act may require such records to be retained.

(Comment 28) FDA interpreted section 801(e)(1)(D) of the act as requiring exported products to be different from products sold in the United States. One comment questioned FDA's interpretation. The comment said that section 801(e)(1)(D) of the act is only intended to prevent diversion of products into domestic commerce. The comment argued that preventing the sale of foreign-market versions of products sold in the United States ''perversely'' establishes a more restrictive regime for products sold in the United States than products not sold or offered for sale in the United States.

Two comments disagreed with FDA's position as it pertains to multiple batches of the same product. (In the draft guidance document, FDA indicated that section 801(e)(1)(D) of the act would not be met if a manufacturer made five batches of the same drug and sought to sell some batches in the United States and to export the others; the draft guidance document indicated that the U.S. sales would show that the product is, in fact, sold in the United States contrary to section 801(e)(1)(D) of the act.) The comments argued that section 801(e)(1)(D) of the act should be interpreted as applying only to specific products that are or were sold or offered for sale in the United States, so products that are intended for export may, in fact, be exported even though the same product or different batches of the product are sold in the United States.

After considering the comment, FDA is clarifying its interpretation of section 801(e)(1)(D) of the act. If the product is legally sold in the United States, and the same product is intended for export for the same approved use and is accompanied by the FDA-approved labeling, FDA may consider the product to be sold or offered for sale in the United States. In most circumstances, the product would not have to meet the requirements of section 801(e)(1) of the act because the product to be exported is the same product that can be legally sold in the United States and does not need to qualify for an exemption from the act's requirements. By stating that the product is ''accompanied'' by the FDA-approved label, FDA does not require the FDA-approved label to be affixed to each exported product, but the agency does expect the FDA-approved label to be included in the export shipment. The agency recognizes that no interest would be served by requiring firms to attach FDA-approved labels to exported products if those labels would have to be removed or altered for the product to be sold in a foreign country.

In contrast, if the product to be exported involves a use that is not approved in the United States, or is labeled solely in a foreign language and whose foreign language labeling has not been approved by FDA, then the product is ''unapproved'' and falls within the act's export provisions. In these cases (as we stated in our response to comment 11 earlier), the product must comply with section 801(e)(1)(D) of the act, and FDA would not consider the product to be sold or offered for sale in the United States within the meaning of section 801(e)(1)(D) of the act.

As for batches of the same product, FDA is clarifying its position to state that batches of a product that are segregated from products intended for domestic commerce or produced on manufacturing lines that are dedicated to export markets, may meet the requirement in section 801(e)(1)(D) of the act as long as the batch intended for export differs from the domestic product. (For example, the product intended for export is not made under the same CGMPs that apply to the product marketed in the United States.)

FDA will revise its guidance document on the FDA Export Reform and Enhancement Act to reflect these positions.

D. Additional Recordkeeping Requirements for Partially Processed Biological Products Exported Under Section 351(h) of the Public Health Service Act (Section 1.101(c))

Proposed § 1.101(c) would establish recordkeeping requirements, in addition to those required under § 1.101(b), for partially processed biological products exported under section 351(h) of the PHS Act.

(Comment 29) One comment would delete all recordkeeping requirements for partially processed biological products. The comment said that proposed § 1.101(b)'s recordkeeping requirements are based on section 802(g) of the act, but that provision is inapplicable to partially processed biological products.

FDA disagrees with the comment. FDA licenses biological products under the authority of section 351 of the PHS Act. The PHS Act requires that biological products be licensed and be

safe, pure, potent, and manufactured in facilities designed to ensure that the product continues to be safe, pure, and potent. Biological products are approved for marketing under the provisions of the PHS Act. However, because most biological products also meet the definitions of ''drugs'' or ''devices'' under the act, they are also subject to regulation under the act. As part of the FDA Export Reform and Enhancement Act, Congress substantially revised section 351(h) of the PHS Act, the provision that allows exports of partially processed biological products not otherwise in compliance with section 351 of the PHS Act and the act. Prior to the amendments, exports of partially processed biological products required FDA approval and were limited to those countries listed in the previous version of section 802 of the act. As amended, section 351(h) of the PHS Act exempts exported partially processed biological products from the requirements of the chapter of the PHS Act and the requirements of the act if certain requirements are met. Section 351(h) of the PHS Act states that a partially processed biological product which:

(1) is not in a form applicable to the prevention, treatment, or cure of diseases or injuries of man;

(2) is not intended for sale in the United States; and

(3) is intended for further manufacture into final dosage form outside the United States, shall be subject to no restriction on the export of the product under this chapter or the Federal Food, Drug, and Cosmetic Act * * * if the product is manufactured, processed, packaged, and held in conformity with current good manufacturing practice requirements or meets international manufacturing standards as certified by an international standards organization recognized by the Secretary and meets the requirements of section 801(e)(1) of the Federal Food, Drug, and Cosmetic Act * * *.

The records in § 1.101(b) will show whether a product complies with section 801(e)(1) of the act, and section 351(h) of the PHS Act clearly requires exports of partially processed biological products to comply with section 801(e)(1) of the act. If FDA could not require such records, an exporter could not show, and FDA could not verify, that an exported, partially processed biological product complies with section 801(e)(1) of the act.

Furthermore, it would be both unfair and illogical to interpret section 801(e)(1) of the act in a manner that would impose more requirements on persons who export foods, drugs, devices, and cosmetics, and comparatively fewer (if any) requirements on persons who export partially processed biological products.

The act and the PHS Act authorize additional recordkeeping requirements to demonstrate compliance with the other requirements for the export of partially processed biological products under section 351(h) of the PHS Act. Partially processed biological products are drugs under the act, and section 351(h) of the PHS Act allows such products to be exempt from both the PHS Act and from the act if certain requirements are met. The rule's recordkeeping requirements for exports under section 351(h) of the PHS Act will allow FDA to determine efficiently whether the terms of the exemption have been met and whether any violations of the act exist, which would be the case if the export does not comply with the exemption in section 351(h) of the PHS Act. The issuance of these regulations, therefore, is authorized under section 701(a) of the act, which gives FDA the authority to issue regulations for the efficient enforcement of the act.

Recordkeeping requirements to implement section 351(h) of the PHS Act are also authorized by section 361 of the PHS Act (42 U.S.C. 264). Under that section, FDA may make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States. Because of their nature, partially processed biological products pose a potential risk of transmitting diseases because they may not have been treated to inactivate infectious agents or other harmful agents. FDA has determined that it may appropriately and effectively regulate partially processed biological products intended for export, and the risks associated with their movement in interstate commerce, by imposing recordkeeping requirements specific to exports under section 351(h) of the PHS Act.

FDA has, however, rewritten § 1.101(c)(2) through (c)(4) to adopt parallel sentence structure. These changes are intended to make the rule easier to read and have no substantive impact on the rule.

(Comment 30) Proposed § 1.101(c)(1) would require persons exporting a partially processed biological product under section 351(h) of the PHS Act to maintain records demonstrating that the product for export is a partially processed biological product, that is, ''not in a form applicable to the prevention, treatment, or cure of disease or injuries of man.''

One comment said it would be impractical to create records to show that a product is a partially processed biological product. The comment said that a partially processed biological product ''is just that, a partially processed biologic.''

FDA disagrees with the comment. Before Congress enacted the FDA Export Reform and Enhancement Act, FDA interpreted the term ''partially processed biologic'' in section 351(h) of the PHS Act as including products that require purification, inactivation, fractionation, or significant chemical modification before the partially processed biological product can be used in making a final product. To demonstrate that a product was a partially processed biological product, a firm provided either an explanation or documentation explaining the need to purify, inactivate, fractionate, or chemically modify the partially processed biological product before it could be used in a final product.

While the FDA Export Reform and Enhancement Act eliminated the need to submit an export application to FDA, it did not alter the term ''partially processed biologic'' or suggest any changes to FDA's interpretation of the term. Consequently, FDA expects firms to have records demonstrating that the product intended for export is, indeed, a partially processed biological product that is eligible for export under section 351(h) of the PHS Act. Those records may consist of an explanation or documentation explaining the need to purify, inactivate, fractionate, or chemically modify the partially processed biological product before it could be used in a final product.

(Comment 31) Proposed § 1.101(c)(4) would require a firm to maintain copies of all labeling that accompanies the partially processed biological product for export, such as a container label with the statement, ''Caution: For Further Manufacturing Use Only,'' and any package insert and to make such copies and package inserts available to FDA during an inspection.

One comment said the proposed requirement was unauthorized under the act and the PHS Act. The comment said that manufacturers should not have to keep copies of all labeling that accompanies an exported product.

FDA disagrees with the comment. The requirement to maintain copies of all product labeling is consistent with CGMP requirements. For example, as part of the batch product and control record requirements for drugs, 21 CFR 211.188(b)(8) requires retention of complete labeling control records, including specimens or copies of all labeling used in batch products. Section 351(h) of the PHS Act expressly requires that exported partially processed

biological products be in conformity with CGMP requirements. The recordkeeping requirement adopted for exports in this rule is, therefore, consistent with existing CGMP requirements that apply to partially processed biological products exported under section 351(h) of the PHS Act. As discussed in greater detail in the response to comment 42 (below), the final rule does not require exporters to maintain duplicate sets of records for export and CGMP purposes. Records required under this rule may be part of the exporter's CGMP or QS regulation records.

The requirement to maintain copies of all product labeling is also consistent with the requirement in section 351(h)(2) of the PHS Act that a partially processed biological product intended for export not be ''intended for sale in the United States'' and the requirement in section 351(h)(3) of the PHS Act that the exported product be ''intended for further manufacture into final dosage form outside the United States.'' Without copies of all labeling, FDA would be unable to determine that the product is labeled in a manner consistent with these requirements. Section 1.101(c)(4) provides a practical approach for implementing sections 351(h)(2) and (h)(3) of the PHS Act because the labeling will help show that the product is not intended for sale in the United States, while the suggested cautionary statement will help demonstrate that the product is intended for further manufacture outside the United States. This cautionary statement is consistent with the statement required on other products intended for further manufacture, such as source plasma (see 21 CFR 640.70(a)(2)), and is also consistent with FDA's authority under section 361(h) of the PHS Act to make and enforce regulations to prevent the introduction, transmission, or spread of communicable disease.

Although FDA suggests the inclusion of the statement, ''Caution: For Further Manufacturing Use Only,'' on the label of exported partially processed biological products, the proposed rule did not mandate the use of that particular statement. The agency included a cautionary statement to give exporters specific information on label statements that may be sufficient to show that the product is intended for further manufacturing into a final dosage form outside the United States, as required by section 351(h)(3) of the PHS Act. The final rule, at § 1.101(c)(4), clarifies that exporters may use other records demonstrating that the exported partially processed biological product is intended for further manufacturing into a final dosage form outside the United States.

(Comment 32) One comment interpreted this provision as requiring valid marketing authorization for the partially processed biological product and stated that the act does not require valid marketing authorization for such products. The comment said that firms might export partially processed biological products for research purposes, for use in clinical evaluations, or for product evaluation before marketing. The comment suggested that an attestation by a company official in the foreign country suffice in place of valid marketing authorization.

The comment misinterprets the rule. Section 1.101(b)(2) and section 801(e)(1)(B) of the act only require that the product not be in conflict with the foreign country's laws. FDA does not interpret this to mean that the exported product must have valid marketing authorization in the foreign country to which it is being exported. FDA recognizes that some countries lack affirmative approval mechanisms for certain products and that some countries do not ''approve'' certain products, particularly products used for research or investigational purposes.

For biological products that may be regulated as devices (and devices generally), the Center for Devices and Radiological Health (CDRH) has information on countries that are nonresponsive to inquiries seeking permission either to market or to conduct clinical tests on devices. Because regulatory conditions pertaining to devices are rapidly changing in many countries, FDA recommends that firms first attempt to obtain authorization from an appropriate government official. If a firm is unsuccessful in establishing communications with a government official and/or obtaining any type of written authorization, or denial of authorization, from a foreign government, it may contact the Division of Program Operations, CDRH, for guidance.

FDA also reiterates that the final rule, as revised, accepts a certification from a responsible company official in the United States that the product does not conflict with the importing foreign country's laws.

E. Notification Requirements for Drugs, Biological Products, and Devices Exported Under Section 802 of the Federal Food, Drug, and Cosmetic Act (Section 1.101(d))

Proposed § 1.101(d) would establish the notification requirements for drugs, biological products, and devices exported under section 802 of the act. In brief, proposed § 1.101(d)(1) would require exporters to provide written notification to the agency that identifies the article's name, identifies its generic name if the article is a drug or the article's type if the product is a device, describes the product's strength and dosage form (if the product is a drug or biological product) or the product's model number (if the product is a device), and identifies the country that is to receive the exported article.

The proposed rule acknowledged that, for exports to listed countries under section 802(b)(1) of the act, section 802(g) of the act requires the notification to identify only the drug, biological product, or device being exported, and does not expressly require the notification to identify the country to which the drug, biological product, or device is being exported. (In contrast, for drugs, biological products, or devices exported to nonlisted countries under section 802 of the act, section 802(g) of the act requires both identification of the exported product and the country to which the product is being exported.) Nevertheless, proposed § 1.101(d) would require that all export notifications under section 802(g) of the act identify the product and the importing country. FDA explained that it took this action because section 802(a)(2) of the act requires FDA to notify the ''appropriate public health official'' in the foreign country receiving an exported drug, biological product, or device if FDA disapproves a marketing application for the drug, biological product, or device, and section 802(f) of the act requires FDA to consult with the ''appropriate public health official in the affected country'' in the event that an exported drug, biological product, or device presents an imminent hazard to the public health. FDA further noted that similar consultation obligations exist if the product's labeling is not in accordance with the requirements and conditions for use in the country in which the drug, biological product, or device has valid marketing authorization and the country to which the drug, biological product, or device is being exported or if the drug, biological product, or device is not promoted in accordance with the labeling requirements of section 802(f) of the act. Thus, to facilitate these notifications and consultations with foreign officials (particularly in the event that FDA disapproves a drug, biological product, or device that has been exported, or the exported product presents an imminent hazard to the public health of the

receiving country), proposed § 1.101(d)(1)(iv) would require all notifications to identify the country or countries that are to receive the exported product.

(Comment 33) Many comments strongly objected to identifying a listed country. Most stated that the act did not require the notification to identify listed countries. Some comments dismissed FDA's rationale regarding its statutory obligation to consult foreign government officials as unlikely to occur or dismissed it without explanation. One comment described the proposed requirement to require notifications to identify the listed country as ''casting a wide net to catch a few guppies at tremendous cost to the other fish,'' and said FDA could conduct an inspection of the firm to obtain the information on the listed countries receiving an exported product. Another comment said that identifying a listed country would mean that FDA is questioning the foreign country's judgment. Others implied that identifying a listed country would be burdensome or would complicate export notifications.

A few comments said firms could voluntarily disclose the identity of the listed country in the notification, but could not be required to do so. One comment suggested that the notification state that the foreign country has provided valid marketing authorization, without identifying the listed country. Only one comment agreed with FDA's rationale to have the notifications identify all countries, including listed countries.

FDA agrees that, if it had to consult a foreign government as required by the act, it could inspect a firm's export records to determine whether listed countries received a particular export. This approach, however, would be much more time-consuming and costly both for the industry and the agency because FDA would have to schedule the inspection, the firm would have to locate and assemble export records, and FDA would have to examine those records before it learned the listed country's identity. Consultation with the listed country, as required by the act, would be delayed, and this could present public health concerns if the agency's obligation to consult the foreign government was due to an imminent hazard finding or if FDA disapproved the product because it was not safe or effective.

The agency also notes that export declarations required by the Bureau of the Census for certain exports and submitted to the U.S. Customs Service identify the ultimate consignee, by name and address, and, depending on the form used, the foreign port of unloading or intermediate consignees (see 15 CFR 30.7 (''Information Required on Shipper's Export Declarations'')). Assuming that firms use these export declarations, it would seem that identifying a listed country would be less burdensome or less problematic than identifying consignees by name and address. It is also difficult to see how requesting identification of a listed country in a notification sent to FDA, when the export declaration given to the U.S. Customs Service identifies the consignee and foreign port, can be characterized as ''questioning'' the judgment of a foreign country.

Nevertheless, given the distinction drawn in the statute and objections to this provision, FDA has revised § 1.101(d) to require identification of unlisted countries only. Firms may voluntarily identify a listed country in a notification, but are not required to do so. If a firm chooses to withhold the identification of a listed country, FDA suggests, but does not require, the firm to state in its notification that the export went to a listed country. (This will enable FDA to determine quickly that the firm did not neglect to identify an unlisted country.) If the statutory obligation to consult with a country receiving an exported product is triggered, FDA will conduct an inspection of the exporting firm to identify which listed countries it must contact.

(Comment 34) One comment said that approved products that are exported should not be the subject of an export notification, even if the product is exported for an unapproved use. The comment said that requiring notifications for these products would be inconsistent with Congressional intent to relieve manufacturers of export obligations and would be beyond FDA's jurisdiction. The comment said that foreign health authorities are ''fully empowered to approve labeling and/or indications that they deem appropriate.''

The comment is only partially correct. Approved products that are exported for their approved indications and are otherwise in compliance with the act's requirements for marketing, distribution, and sale in the United States are not subject to the export requirements in section 802 of the act. For these exports, no notification is necessary.

However, exports of an ''approved'' product for an unapproved use are subject to section 802 of the act. For example, section 802 of the act applies to drugs that require approval under section 505 of the act (21 U.S.C. 355) ''before such drug * * * may be introduced or delivered for introduction into interstate commerce.'' The act defines ''interstate commerce,'' in part, as ''commerce between any State or Territory and any place outside thereof.'' Exports fall within the definition of ''interstate commerce'' because the shipment originates in a State and is destined to a ''place outside.'' Additionally, contrary to the comment's suggestion, the exported drug is not ''approved'' by FDA because the intended use in the foreign country was not the subject of a FDA-approved application. To phrase this another way, FDA's approval processes includes approval of the drug's indications for use, so the fact that the agency may have approved the drug for other uses does not relieve the manufacturer from compliance with section 505 of the act when unapproved uses are concerned.

The agency notes that, as an alternative to section 802 of the act, such exports may be permitted under section 801(f) of the act. Exports under section 801(f) of the act must comply with the requirements in section 801(e)(1) and (f) of the act, but do not require notification to FDA. If a product can be exported under either section 802 or 801(f) of the act, the exporter has the option of determining which export authority to use.

(Comment 35) The proposed rule would require persons exporting a product in anticipation of market authorization in a listed country under section 802(d) of the act to comply with the notification requirements in proposed § 1.101(d)(1). The preamble to the proposed rule explained that this requirement would be consistent with an interpretation of section 802(g) of the act that considers the nexus between section 802(b)(1) and (d) of the act. Section 802(g) of the act requires exporters of drugs, biological products, and devices to provide a simple notification to the agency when they export a product to a listed country or to an unlisted country under section 802(b)(1) of the act. Section 802(b)(1) of the act permits exports when the drug, biological product, or device has valid marketing authorization in a listed country, whereas section 802(d) of the act permits exports to a listed country in anticipation of market authorization. FDA stated that a literal interpretation of section 802(g) of the act would not require an exporter to notify FDA when it shipped a product to a listed country in anticipation of market authorization, but would instead require the exporter to notify FDA when the exporter shipped the same product to the same country once it has marketing

authorization. The preamble to the proposed rule stated that it would be more simple and efficient, both for exporters and FDA, if exporters notify FDA when they export a product in anticipation of market authorization under section 802(d) of the act rather than wait for marketing authorization in the listed country and then notify FDA when the product is exported under section 802(b)(1) of the act. FDA's intent was to allow firms to submit the notification when they first exported a product in anticipation of market authorization and to eliminate any need for them to submit a notification later when they received marketing authorization.

Many comments objected to requiring a notification for exports under section 802(d) of the act, stating that the act did not authorize such notifications. Some said that FDA could not justify requiring such notification on the grounds that it would be more efficient or simpler. One comment viewed the proposed notification requirement as a prohibition on exports that would delay the availability of products. Another comment interpreted the rule as requiring two notifications—one for exports in anticipation of market authorization, and a second when the product received marketing authorization.

Only one comment agreed with the proposal, but reiterated that a subsequent notification once the product received marketing authorization should not be required.

FDA has revised the final rule to limit notifications to products exported under section 802(b) of the act. In other words, no notification is required if the export is made in anticipation of market authorization under section 802(d) of the act. A person who exports a product in anticipation of market authorization, and later receives marketing authorization, would only submit the notification to FDA when the first export occurs to a particular foreign country following marketing authorization in that country.

(Comment 36) One comment said that section 802(d) of the act permits anyone to export a product in anticipation of market authorization, regardless of who applied for market authorization.

Section 802(d) of the act is commonly referred to as allowing firms to ''fill the pipeline'' so that a product will be available immediately upon market authorization by a foreign country. If the comment's interpretation of section 802(d) of the act were correct, any firm could export the product so long as one firm was seeking market authorization. In other words, under the comment's interpretation, if firm A were seeking market authorization to sell a drug called X, firms B, C, and D could export drug X to the same foreign country under the guise of ''anticipating'' market authorization. The comment's interpretation of section 802(d) of the act also would place little weight on the term ''anticipation'' of market authorization. Arguably, if a firm has not applied for market authorization, it cannot be characterized as ''anticipating'' market authorization. The inclusion of the word ''anticipation'' in section 802(d) of the act suggests that the firm exporting the drug or device is, in fact, the entity that is seeking market authorization or would be capable of distributing that drug or device upon marketing authorization.

Consequently, FDA interprets section 802(d) of the act as follows. If the foreign country's product approval process is specific to an application (i.e., to have marketing authorization, a firm must submit an application, and the application must be approved), then a firm seeking to invoke section 802(d) of the act to export a drug or device to a foreign country must be seeking market authorization in that foreign country.

If, however, the foreign country's product approval process would allow multiple products on the market upon market authorization (i.e., once marketing authorization occurs, any person can market a drug or device that meets the conditions of that marketing authorization), then a firm seeking to invoke section 802(d) of the act to export a drug or device to such a foreign country does not have to be the firm that sought marketing authorization in that foreign country.

This interpretation of section 802(d) of the act acknowledges both the marketing authorization process in a foreign country and gives appropriate weight to the words ''in anticipation of market authorization.''

(Comment 37) Proposed § 1.101(d)(1) would require a notification to identify the exported product by name. If the exported product were a drug or biological product, the proposal would require the notification to provide a generic name and a description of the product's strength and dosage form. If the exported drug were a device, the proposal would require the notification to identify the type of device and to provide its model number.

One comment stated that, because FDA is generally not able to examine sales and marketing information, it would be appropriate for the notification to contain information on the product, classification, lot code or unique identifying number, country of exportation, and whether or not the product was accepted.

FDA declines to revise the rule as suggested by the comment. The product-specific information described in § 1.101(d)(1) should be sufficient to identify a particular export. Firms are free to provide information on a lot code or a unique identifying number, but the final rule does not require this. Furthermore, because the act presumes that the United States is the country from which the product is exported and because section 801(e)(1)(B) of the act requires the exported product to be ''not in conflict'' with the foreign country's laws, FDA declines to require firms to identify the country of exportation or to state whether the product was ''accepted.''

(Comment 38) FDA, on its own initiative, has revised § 1.101(d)(1)(ii) to replace ''generic name'' with ''abbreviated or proper name.'' In proposing to require the export notification to contain the product's ''name'' and its ''generic name,'' FDA intended to require persons exporting a human drug to identify the product by its trade name and its abbreviated chemical name and to require persons exporting a biological product to identify the product by its trade name and its proper name. However, the term ''generic name'' created some confusion within FDA as to whether FDA was specifically interested in generic drug products. Consequently, FDA has revised § 1.101(d)(1)(i) to require the notification to identify the product's trade name while § 1.101(d)(1)(ii) now requires the notification to contain the exported product's ''abbreviated or proper name.'' The agency has made a similar change to § 1.101(e)(1)(i) and (e)(1)(ii).

The agency has also inserted language referring to biological products in § 1.101(d)(1) to clarify that investigational biological products may be exported under section 802(c) of the act and that biological products may be exported in anticipation of marketing authorization under section 802(d) of the act.

(Comment 39) A few comments addressed the frequency of export notifications. Two comments said notifications should be required only for the first export of a product. The comments stated that subsequent exports should not result in notifications, although the comments were unclear whether the subsequent export could be to a different country than the initial export.

Section 802(g) of the act requires an exporter of a drug or device to provide

a simple notification to FDA under two different scenarios. In one scenario, the exporter must provide the simple notification when it first begins to export the drug or device to any listed country. This means that subsequent exports of the same drug or device to the same listed country or to any other listed country do not result in a simple notification to FDA. To illustrate how this works, assume that company X, under section 802(b) of the act, wants to export a drug to listed country A. Company X must provide a simple notification to FDA identifying the drug to be exported. If company X later wants to export the same drug to listed country B under section 802(b) of the act, the company does not have to send a simple notification to FDA because company X already provided a simple notification when it exported the drug to listed country A and because country B is a listed country.

In the other scenario, when the export is to an unlisted country, section 802(g) of the act requires the exporter to provide the simple notification when it first begins to export the drug or device to that unlisted country, and the notification must identify the unlisted country. The act, therefore, requires a simple notification whenever the exporter first ships a drug or device to an unlisted country. Thus, to use the same illustration, if company X, under section 802(b) of the act, wants to export a drug to unlisted country D, company X must provide a simple notification that identifies the drug being exported and must also identify unlisted country D. Subsequent exports of the same drug to unlisted country D would not require company X to send a simple notification to FDA. However, if company X later wants to export the same drug to unlisted country E under section 802(b) of the act, company X must provide another simple notification to FDA, and the simple notification must identify the drug being exported and unlisted country E.

(Comment 40) In the preamble to the proposed rule, FDA invited comment on possible alternatives to this notification requirement that would satisfy the consultation, notification, and recordkeeping obligations and requirements in section 802 of the act. The agency was especially interested in alternatives that would reduce the paperwork burden, such as electronic submissions and recordkeeping or periodic notifications (e.g., monthly, quarterly), and the details of such alternatives.

One comment suggested that FDA accept export notifications that covered more than one country. Another comment suggested that FDA accept notifications on an annual basis, or no more often than a biannual basis, that the notifications be submitted in tabular form and submitted directly, if not electronically, to FDA. One comment suggested that FDA develop an interactive website so exporters could ''fill in the blanks.'' Another comment suggested using Operational and Administrative System for Import Support (OASIS) system entries as notifications under section 802(g) of the act and would have annual reports submitted by exporters serve as confirmation of the export; the comment said that the notifications described in the proposed rule would add significant costs to manufacturers.

FDA appreciates the comments' suggestions. The agency does not object if a simple notification covers more than one country; nothing in the act or these regulations prevents firms from identifying more than one country in a simple notification. Furthermore, if the foreign purchaser's specifications change after the first shipment, and the new specifications result in a drug or device that is not significantly different from the first exported drug or device, an exporter may, but is not required to, provide a new notification. For example, assume that company X is exporting an electronic device to listed country A. Later, the foreign purchaser revises its product specifications to change the voltage requirements for the device. The revised product specifications call for an electronic device that is substantially similar to the original electronic device, so FDA would not require another notification.

In contrast, if company X is exporting a combination drug to listed country A, and the foreign purchaser revises its product specifications to substitute a different active ingredient, the drug to be exported has changed significantly, and FDA would expect the exporter to provide a new simple notification to cover the changed drug product when the exporter ''first begins'' to export the changed drug product.

As for electronic submissions and other technology, FDA intends to explore options for facilitating notification to FDA, but is unable to create an interactive, web-based system at this time. The agency is also unable to adapt the OASIS system to cover notifications because the OASIS system focuses on imports, not exports, and is operationally separate from FDA's administrative oversight of exports.

As for annual or semiannual submissions, the agency considered these options, but section 802(g) of the act appears to contemplate more timely notifications. The act requires notifications when the exporter ''first begins'' to export the drug or device under section 802(b)(1) of the act, so the most logical interpretation of the phrase ''first begins'' would mean that exporters must provide the notification to FDA when they actually export the drug or device.

(Comment 41) FDA, on its own initiative, has revised the address for export notifications involving biological products and devices regulated by the Center for Biologics Evaluation and Research. The final rule replaces ''Office of Compliance'' with ''Office of Compliance and Biologics Quality.'' This change reflects the current office name.

F. Recordkeeping Requirements for Products Subject to Section 802(g) of the Act (Section 1.101(e))

Proposed 1.101(e) would establish additional recordkeeping requirements for exported drugs, biological products, and devices subject to section 802(g) of the act. These records would include, but not be limited to: (1) Records concerning the product's name, (2) the product's generic name if the product is a drug or a biological product or the type of device if the product is a device, (3) a description of its strength and dosage form and the product's lot or control number (if the product is a drug or biological product) or the product's model number (if the product is a device), (4) the consignee's name and address, and (5) the date on which the product was exported and the quantity of product exported.

(Comment 42) Several comments objected to most or all of the proposed recordkeeping requirements. Some comments argued that manufacturers already keep CGMP records and that none of the information sought in proposed § 1.101(e) is required or even authorized by law. Another comment said the proposed recordkeeping requirement was ''excessive'' because it required too many documents be kept. Another comment said FDA should only require companies to keep records of exports to countries where they directly export drugs; if the drugs were subsequently exported elsewhere by the importing company, the importing company would be responsible for records of shipments to third countries.

One comment sought clarification, asking if the records required by § 1.101(e) are distinct from the quality system regulation records required for devices under 21 CFR part 820.

Section 802(g) of the act clearly states that, ''Any exporter of a drug or device shall maintain records of all drugs or

devices exported and the countries to which they were exported.'' The most straightforward interpretation of this provision is that export records must be kept for drugs and devices exported under section 802 of the act and that those records must also contain information regarding the countries receiving the exported product. Thus, FDA disagrees with those comments claiming that the records sought in § 1.101(e) are not required or authorized by the act.

Moreover, persons exporting drugs or devices, particularly persons who manufacture the exported drug or device, should already possess the information sought in § 1.101(e). For example, § 1.101(e)(1)(i) requires records containing the product's name. Most prudent exporters know the names of the products being exported. Section 1.101(e)(1)(ii) and (e)(1)(iii) requires records to contain more specific information about the drug or device, such as the drug's strength and dosage form or the type of device and its model number. A manufacturer who is exporting products should know the product's abbreviated name or proper name, strength, dosage form, and lot or control number (if the product is a drug or biological product) or the type of device and model number (if the product is a device), because this information is related to CGMPs for the product (see, e.g., 21 CFR 211.100 (written procedures for production and process control), 211.110 (sampling and testing of in-process materials and drug products), 820.70 (production and process controls for devices), and 820.160 (requiring device manufacturers to maintain distribution records which include or refer to the location of the consignee's name and address, the identification and quantity of devices shipped, the date shipped, and control numbers used). Additionally, section 802(f)(1) of the act prohibits exportation of a drug or device, under section 802 of the act, if the drug or device is not manufactured, processed, packaged, and held in substantial conformity with CGMP requirements. Thus, an exporter who is in substantial conformity with CGMPs should already possess the information described in § 1.101(e)(1)(ii) and (e)(1)(iii). Finally, § 1.101(e)(1)(iv) and (e)(1)(v) require the records to include the consignee's name and address, the date on which the product was exported, and the quantity of product exported. Presumably, an exporter knows where it is sending a product, when it ships the product, and how much was shipped.

FDA emphasizes that § 1.101(e) does not require exporters to keep duplicate sets of records—one for export purposes and another for CGMP purposes—nor does it require exporters to create new records if the exporter keeps the information described in § 1.101(e) elsewhere. The records sought by § 1.101(e) may be part of the exporter's CGMP or QS regulation records.

Furthermore, to give exporters additional flexibility in meeting this requirement, FDA has amended § 1.101(e)(2) to state that the records may be kept at the site from which the products were exported ''or manufactured.'' This change will accommodate firms who manufacture products for export and are responsible for the product's exportation, but who send the product to another location for packaging or other operations before exportation occurs.

(Comment 43) Two comments asked FDA to clarify what it wanted regarding a consignee's name and address. The comments explained that devices are often exported to distribution centers, and so the comment suggested that distribution centers should be acceptable as consignees. Other comments said FDA cannot require any records identifying a consignee. The comments asserted that the act does not require or even authorize FDA to require such information.

FDA does not object if a distribution center in a foreign country is listed as a ''consignee'' under this rule. Identification of the consignee's name and address is intended to help FDA in the event that it has to consult foreign government officials regarding an exported product. The consignee's name and address will inform government agencies where the exported drug or device was first sent and will help speed efforts to recover or to prevent the distribution of potentially hazardous products.

As for those comments objecting to identifying a consignee, FDA's general rulemaking authority in section 701(a) of the act provides sufficient statutory authority to require these records. FDA also believes that exporters would retain records identifying the consignee, by name and address, as part of their normal business practices because, presumably, the consignee ordered the drugs or devices and must pay for and receive the exported product. FDA further notes that export declarations submitted to the U.S. Customs Service must identify ultimate consignees by name and address, and, depending on the form used, may even identify intermediate consignees. Thus, exporters should have information regarding a consignee's name and address.

(Comment 44) Proposed § 1.101(e)(2) would require exporters to keep records at the site from which the products were exported and to maintain those records for at least 5 years after the date of exportation.

Several comments objected to the 5-year period. Two comments advocated a 2-year period in order to be consistent with the QS regulation requirements. One comment suggested retaining records for 3 years after the product's expiration date. Another comment criticized the agency for not providing a rationale for the 5-year period; this comment said that 5-year period might be too long in some situations, but not long enough in others, and said the time period was inappropriate without some rationale and a link to the act.

The records required in § 1.101(e) are similar, if not identical to, some records that are kept for CGMP or QS regulation purposes. To make recordkeeping easier for firms, FDA has revised the rule to state that these records must be retained in accordance with the record retention period for CGMP or QS regulation records. FDA reiterates that firms may use their CGMP or QS regulation records for dual purposes (i.e., to demonstrate compliance with CGMP or QS regulation requirements and to demonstrate compliance with the export regulations in § 1.101) and do not have to keep dual sets of records.

(Comment 45) One comment said that proposed § 1.101(e) did not apply to investigational new drugs exported under section 802(c) of the act, but said that companies maintain records on such exports due to other obligations, such as CGMP requirements.

FDA disagrees with the comment's interpretation. The relevant portion of section 802(g) of the act states that ''any exporter of a drug or device'' shall maintain records; this differs from the other sentences in section 802(g) of the act which refer to exporters of drugs or devices exported under section 802(b)(1)(A) of the act. As a result, § 1.101(e) does apply to exports of investigational drugs under section 802(c) of the act.

G. Miscellaneous Comments

Several comments addressed issues concerning implementation of the rule or other export matters.

(Comment 46) One comment asked how the rule relates to other export documents issued by FDA. Another comment said interpreting sections 801 and 802 of the act is complicated by the lack of clear implementing regulations; the comment said it is difficult to determine which requirements apply to a given product and asked FDA to

develop a rule to implement the export act.

FDA prepared four agency wide documents to implement the FDA Export Reform and Enhancement Act. The agency developed a draft guidance document describing its interpretation of the export provisions; the guidance document is not binding on regulated industries or on FDA. For binding requirements, FDA prepared three regulations: (1) A rule to implement the ''import for export'' requirements in section 801(d) of the act, (2) a rule pertaining to export notifications and recordkeeping (which is presented here), and (3) a rule pertaining to exports of investigational new drugs (which FDA intends to publish in the **Federal Register** in the future). In general, the regulations would describe the types of records that should be kept or the contents of submissions that are sent to FDA. The agency published a draft guidance document in the **Federal Register** of June 12, 1998 (63 FR 32219). FDA published a proposed import for export regulation in the **Federal Register** on November 24, 1998 (63 FR 64930), and intends to publish a proposed rule on investigational new drug exports in the immediate future.

Other export-related documents issued by FDA include a rule on investigational device exports (now codified at § 812.18(b) (21 CFR 812.18(b))) and a Compliance Policy Guide, CPG 7150.01, ''Certification for Exports,'' on export certificates.

FDA agrees that implementing sections 801 and 802 of the act is difficult because the statutory requirements apply to different products in different ways. For example, most human drugs are subject to the export requirements in sections 802 and 801(e)(1) of the act, but insulin and antibiotics for human use and animal drugs are only exported under section 801(e) of the act. Most devices can be exported under section 801(e) or section 802 of the act, and either choice carries its own set of requirements. FDA prepared the guidance document in an effort to sort out the various requirements for each product and drafted the regulations to create binding requirements where such requirements were necessary. The agency decided against drafting a single rule because there was little overlap or commonality between subjects. For example, the import for export requirements are not relevant for exports of investigational new drugs, so a single rule would have been inappropriate and confusing.

(Comment 47) One comment asked FDA to phase-in the rule to minimize its impact on commerce.

The final rule is effective March 19, 2002. This should give firms sufficient time to comply with the rule.

(Comment 48) One comment said FDA should conduct educational seminars or programs, in conjunction with the U.S. Customs Service and with the support of various trade associations, or do a televised program whose agenda is developed by industry and Federal agencies.

FDA has, in the past, participated in conferences and educational programs that have discussed export matters, and individual centers have prepared guidance documents and other materials on selected topics. For example, CDRH has prepared a videotape on export issues. The agency intends to continue its participation in educational conferences and programs to the extent that its resources permit.

(Comment 49) One comment would revise § 1.101 to require only a simple notification for drugs and devices exported for investigational use. The comment said that drugs and biological products that are exported for investigational use and are the subject of an IND are regulated more strictly than drugs and biological products that are exported for investigational use without an IND. The comment said that FDA authorization is needed under § 312.110, but drugs that are exported without an IND only require a simple notification to FDA. Consequently, the comment would revise the export provisions in both parts 312 and 812 (21 CFR part 812) to require only simple notifications for drugs and devices exported for investigational use.

The agency declines to revise § 1.101 as suggested by the comment. Section 802(g) of the act only requires simple notifications for exports under section 802(b)(1) of the act. FDA expects most exports of drugs or devices for investigational use in a listed country will fall under section 802(c) of the act; this means that exports of investigational drugs or devices to a listed country do not require a person to provide a simple notification to FDA. If, however, a firm exports a drug or device for investigational use under section 802(b)(1) of the act, the firm will have to provide a simple notification to FDA.

Additionally, as stated earlier, FDA intends to publish a proposed rule in the **Federal Register** to revise § 312.110 to describe various approaches for exporting investigational new drugs. FDA has already revised § 812.18(b) to state that exports of investigational devices are subject to either sections 801 or 802 of the act, so no further changes to § 1.101 are necessary.

(Comment 50) The draft guidance document discussed FDA's position on transshipment of investigational drugs and devices (the shipment of an export from one country to a second country, followed by the shipment of the same product from the second country to a third country) (see 63 FR 62219 at 32228). The draft guidance document interpreted section 802(c) of the act as not allowing transshipment from a listed country to an unlisted country because the act does not suggest that the listed countries are mere transfer points or conduits for investigational drugs and devices destined for unlisted countries and because allowing transshipment from listed to unlisted countries would undermine the statutory limitation on investigational drug and device exports to listed countries. The proposed rule on export notifications and recordkeeping was silent on this issue.

Nevertheless, two comments submitted to the proposed rule (instead of the draft guidance document) objected to FDA's position on transshipment. The comments argued that shipments between listed and unlisted countries are matters covered by foreign law and that FDA's interpretation would restrict a firm's ability to conduct clinical trials outside the United States or otherwise defeat congressional intent and deprive foreign governments of the ''right'' to determine whether subsequent exports should be made.

The issue of transshipment of investigational drugs and devices is not relevant to the final rule. Nevertheless, the unrestricted transshipment of investigational drugs and devices from listed to unlisted countries would undermine the express limitation in section 802(c) of the act. Section 802(c) of the act allows exports of drugs and devices ''intended for investigational use in any [listed] country * * * in accordance with the laws of that country.'' The key statutory phrase is that the drug or device must be intended for investigational use in a listed country. In a transshipment scenario, the drug or device is intended for investigational use in an unlisted country, and this would be contrary to section 802(c) of the act.

However, if the investigation in the unlisted country is subject to the laws and regulations of the listed country—in other words, if persons in the listed country remain responsible for the conduct of the clinical trial and the investigation complies with the listed country's laws—shipment to an unlisted country is not contrary to the act. To illustrate how this works, assume that an investigational new drug is exported

to a listed country, i.e., ''country LC.'' If the investigational new drug is then shipped to an unlisted country (''country X''), but the investigation is conducted in accordance with country LC's laws and regulations, shipment to country X is permitted under section 802(c) of the act. FDA reaches this interpretation because the investigation is intended for use in the listed country, albeit in a broad sense, and remains subject to the listed country's laws.

If, however, the investigational drug is simply shipped to a warehouse in country LC and then shipped to country X, without anyone in country LC being responsible for the investigation or having the investigation remain subject to country LC's laws, then the export would not comply with section 802(c) of the act. The statutory requirements in section 802(c) of the act would not be met because the investigational use was never intended to be in the listed country and is not subject to country LC's laws.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

The proposed rule estimated the costs associated with submitting notifications to FDA and maintaining records. FDA based its estimates on the number of notifications received by FDA in 1996 or 1997 (depending on the last year for which complete figures were available at the time of the proposed rule) and consultations with industry sources (64 FR 15944 at 15946). The Office of Management and Budget (OMB), in reviewing FDA's Paperwork Reduction Act documents, neither approved nor rejected FDA's request for approval of a new information collection. Instead, OMB stated that it had concerns regarding the burden and utility of the collection which shall be assessed in light of public comments received. FDA received several comments on the agency's estimates.

(Comment 51) For the recordkeeping requirements for human drugs, biological products, animal drugs, devices, foods, and cosmetics exported under or subject to section 801(e)(1) of the act, FDA estimated that there would be an average of 318 recordkeepers per year, at a annual frequency of 2.8 records per respondent, at 1 hour per record. One comment said that FDA ''grossly underestimated'' the recordkeeping burden because the rule presents significant burdens on food manufacturers and creates ''an entirely new recordkeeping bureaucracy for exporters of food products.'' The comment stated that translating letters alone will take more than 1 hour per product.

FDA disagrees with the comment. Section 801(e)(1) of the act is not a new statutory requirement, particularly when applied to food exports, so it does not present a new or significant burden on food manufacturers or create ''an entirely new recordkeeping bureaucracy.'' Additionally, the final rule reduces any burden on exporters by revising certain requirements; for example, the final rule clarifies that the foreign purchaser's specifications should provide sufficient detail to be linked to a particular export and that a responsible company official may certify that the export does not conflict with the importing country's laws.

While FDA concedes that § 1.101(b) does, in one instance, seek English-language translations of foreign documents, presumably a prudent U.S. company would translate foreign-language documents as part of its ordinary business practice, if only to ensure that the foreign-language document is what it purports to be or that the U.S. company truly understands the contents of the foreign-language document or that the U.S. company would be able to translate the foreign-language document into English.

As for the burden hour estimate for § 1.101(b), FDA, as explained below, has increased the burden hour estimate to 24 hours per record.

(Comment 52) The preamble to the proposed rule estimated the total information collection burden to be 2,659 hours and that no capital costs or operating and maintenance costs would result.

Several comments said FDA underestimated the total and that firms would incur new costs. Two trade associations, representing device manufacturers and drug manufacturers, indicated that the estimated information collection burden and costs for a single firm would be significant. For example, one device firm was said to market its products in 90 countries and in approximately 600 different packaging and labeling configurations. According to the comment, to meet the proposed recordkeeping requirements, the firm would need new records for at least 500 configurations, at $30 per hour and 4 hours per record (for a total update cost of $60,000) and recordkeeping costs would be $100 per hour for 500 records, or an additional $50,000. For new products, estimated record preparation costs would be $30 per hour x 4 hours x 84 products (or $10,080) and recordkeeping costs of $8,400. As another example, a trade association representing the drug industry interpreted the rule as requiring detailed records on product specifications and translations. The comment said that one drug company estimated that it spends 160 employee hours of ''regulatory time'' and 80 person hours of ''legal time'' alone to obtain documentation necessary to export to a single multicenter trial in Latin America and Eastern Europe. (The comment did not explain what ''regulatory time'' or ''legal time'' are.) The comment did not provide an estimate of the information collection burden because it said that FDA's requirements were open-ended; instead, it declared FDA's estimates to be ''unrealistic.'' Two comments also said that drug companies would need to spend $50,000 to $100,000 in capital costs alone to upgrade their computers to comply with the proposed requirements.

FDA reiterates that its estimates were based on the number of export notifications FDA has received and on information provided by industry sources. Those industry sources varied in terms of the amount of time required to maintain a record or to submit a notification, and none indicated that computer upgrades would be necessary. The averages must be compared against the estimates provided in the comments, which are based on information from a single company.

The agency also disagrees, in part, with the estimates provided by a single device firm. In general, devices may be exported under section 801(e) or 802 of the act. The agency reiterates that, for devices, the requirements in section 801(e)(1) of the act are not new; consequently, if the devices are exported under section 801(e) of the act, the comment's claim that hundreds of ''new'' records would be required cannot be accurate unless the firm has not been retaining any documents to show its compliance with section 801(e)(1) of the act. In contrast, if the firm is exporting devices under section 802(b) of the act, section 802(g) of the act would require the firm to submit a notification to FDA. Yet FDA's export notification records do not reveal a significant number of device exports or a significant number attributable to one firm. The average number of export notifications received was 244 per year. This average covers both drug and device firms and is far lower than the

500 export configurations claimed by the single device firm in the comment.

Nevertheless, FDA has increased the recordkeeping burden hour estimate for § 1.101(b) from 2 hours to 24 hours. This estimate exceeds the 4-hour estimate submitted by the device firm and is consistent with a comment (described below in comment 53) from a drug company.

FDA declines to adopt the 240-hour figure provided by a drug company for exports of a drug for investigational use because FDA cannot determine what activities are covered by the comment's estimate or whether the comment's estimate even involves activities that are covered by the rule. For example, the comment stated that it devoted considerable time assembling documents to export drugs to a single multicenter trial in Latin America and Eastern Europe. The comment's reference to Latin America and Eastern Europe suggests that the firm is not exporting the drugs under section 802(c) of the act because section 802(c) of the act pertains solely to exports of investigational new drugs and devices to listed countries, and Latin American and Eastern European countries are not listed countries. So, to export a drug for investigational use, the firm must be exporting the investigational new drugs under an IND or under § 312.110, or the exported drugs have marketing authorization from a listed country. (It is possible that the firm could export an investigational new drug under section 802(b)(1) of the act if the drug received market authorization from a listed country, but the comment did not indicate that the investigational new drug has such market authorization.) Yet this final rule does not address exports under an IND or § 312.110, and therefore, if the firm's comment is relevant to this rule, the firm would have to be exporting drugs that have marketing authorization from a listed country and using those drugs for investigational use in Latin America and Eastern Europe. Assuming this to be the case, the changes in the final rule, such as accepting a certification from a responsible company official in place of a letter from a foreign government and clarifying FDA's expectations regarding a foreign purchaser's specifications, should reduce the firm's information collection burden.

(Comment 53) One comment said that FDA underestimated the rule's financial impact. The comment explained that, for a single firm, ''notifications'' for section 801(e) of the act (which FDA presumes to be ''records'' because section 801(e)(1) of the act does not require notification) will result in five files and five records per year and require 24 to 32 hours for each export file. For notifications under section 802(g) of the act, there will be 10 files and 7 records per year, at 0.75 hours per export notification and 16 hours per export file. For partially processed biological products, the comment claimed its averages as 18 files and 5 records per year, at 16 hours per export file.

FDA has increased the burden hour estimate for records under § 1.101(b) to 24 hours per record. The agency declines to use the higher estimate of 32 hours because the final rule simplifies the types of records that are required to show compliance with section 801(e)(1) of the act. For example, the final rule accepts a company official's notarized certification that the exported product is not in conflict with the foreign country's laws, whereas the proposed rule would have required a letter from a foreign government official.

FDA did not revise the estimates for § 1.101(d). Although the comment suggests that the average number of notifications is greater than 2.4 per respondent, the comment's claimed average of five notifications per year may be accurate for that particular firm and may not be applicable to all firms exporting products. FDA based its estimate on the total number of notifications received and the total number of firms submitting notifications. FDA further notes that its estimate of 1 burden hour per notification is actually greater than the comment's estimate of 0.75 burden hours per notification. The comment's average time may reflect that firm's efficiency in processing notices, and FDA will not assume that all firms are as efficient.

As for partially processed biological products, although the comment suggests that the average number of notifications is greater than 2.4 per respondent, the comment's claimed average of five notifications per year may be accurate for that particular firm and may not be applicable to all firms exporting products. FDA based its estimate on the total number of notifications received and the total number of firms submitting notifications. The agency is, however, increasing the burden hour estimate for § 1.101(e) from 2 to 16 hours as suggested by the comment.

This final rule contains information collection requirements which are subject to review by OMB under the Paperwork Reduction Act of 1995. The title, description, and respondent description of the information collection requirements are shown below, with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Exports: Notification and Recordkeeping Requirements.

Description: The final rule establishes the notification and recordkeeping requirements for persons exporting a human drug, biological product, device, animal drug, food, or cosmetic under section 801(e) or 802 of the act or section 351(h) of the PHS Act.

Description of Respondents: Businesses.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
1.101(b)	316	2.8	885	24	21,240
1.101(c)	8	2	16	2	32
Subtotal—Regulatory					21,272
1.101(d)	244	2.4	586	1	586
1.101(e)	175	3.3	578	16	9,248
Subtotal—Statutory					9,834
Total					31,106

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimates are based on the number of notifications received by the relevant FDA centers in 1996 or 1997 (depending on the last year for which figures were available) as well as consultations with and comments from industry sources.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, FDA has submitted a copy of this rule to OMB for its review of these previously approved information collection requirements.

V. Analysis of Impacts

FDA has examined the impacts of this rule under Executive Order 12866 and the Regulatory Flexibility Act (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize new benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes this rule is consistent with the regulatory philosophy and the principles identified in the Executive order. In addition, OMB has decided that the rule is a significant regulatory action as defined in the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The rule establishes the notification and recordkeeping requirements for persons exporting various FDA-regulated products under sections 801(e) and 802 of the act and section 351(h) of the PHS Act. The notification and recordkeeping requirements are minimal and involve information that should already be in an exporter's possession (such as the name of the product being exported, a description of the product being exported, and the date of exportation). Thus, FDA certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The agency has determined that the final rule is not a significant action as defined in the Unfunded Mandates Reform Act, and will not have an effect on the economy that exceeds $100 million in any one year.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 1 is amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

1. The authority citation for 21 CFR part 1 is revised to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 343, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 241, 243, 262, 264.

2. Section 1.101 is added to subpart E to read as follows:

§ 1.101 Notification and recordkeeping.

(a) *Scope.* This section pertains to notifications and records required for human drug, biological product, device, animal drug, food, and cosmetic exports under sections 801 or 802 of the Federal Food, Drug, and Cosmetic Act (the act) or (21 U.S.C. 381 and 382) or section 351 of the Public Health Service Act (42 U.S.C. 262).

(b) *Recordkeeping requirements for human drugs, biological products, devices, animal drugs, foods, and cosmetics exported under or subject to section 801(e)(1) of the act.* Persons exporting an article under section 801(e)(1) of the act or an article otherwise subject to section 801(e)(1) of the act shall maintain records as enumerated in paragraphs (b)(1) through (b)(4) of this section demonstrating that the product meets the requirements of section 801(e)(1) of the act. Such records shall be maintained for the same period of time as required for records subject to good manufacturing practice or quality systems regulations applicable to the product, except that records pertaining to the export of foods and cosmetics under section 801(e)(1) of the act shall be kept for 3 years after the date of exportation. The records shall be made available to the Food and Drug Administration (FDA), upon request, during an inspection for review and copying by FDA.

(1) Records demonstrating that the product meets the foreign purchaser's specifications: The records must contain sufficient information to match the foreign purchaser's specifications to a particular export;

(2) Records demonstrating that the product does not conflict with the laws of the importing country: This may consist of either a letter from an appropriate foreign government agency, department, or other authorized body stating that the product has marketing approval from the foreign government or does not conflict with that country's laws, or a notarized certification by a responsible company official in the United States that the product does not conflict with the laws of the importing country and that includes a statement acknowledging that he or she is subject to the provisions of 18 U.S.C. 1001;

(3) Records demonstrating that the product is labeled on the outside of the shipping package that it is intended for export: This may consist of copies of any labels or labeling statements, such as ''For export only,'' that are placed on

the shipping packages or, if the exported product does not have a shipping package or container, on shipping invoices or other documents accompanying the exported product; and

(4) Records demonstrating that the product is not sold or offered for sale in the United States: This may consist of production and shipping records for the exported product and promotional materials.

(c) *Additional recordkeeping requirements for partially processed biological products exported under section 351(h) of the Public Health Service Act.* In addition to the requirements in paragraph (b) of this section, persons exporting a partially processed biological product under section 351(h) of the Public Health Service Act shall maintain, for the same period of time as required for records subject to good manufacturing practice or quality systems regulations applicable to the product, and make available to FDA, upon request, during an inspection for review and copying by FDA, the following records:

(1) Records demonstrating that the product for export is a partially processed biological product and not in a form applicable to the prevention, treatment, or cure of diseases or injuries of man;

(2) Records demonstrating that the partially processed biological product was manufactured in conformity with current good manufacturing practice requirements;

(3) Records demonstrating the distribution of the exported partially processed biological products; and

(4) Copies of all labeling that accompanies the exported partially processed biological product and other records demonstrating that the exported partially processed biological product is intended for further manufacture into a final dosage form outside the United States; this may include a container label with the statement, ''Caution: For Further Manufacturing Use Only'' and any package insert.

(d) *Notification requirements for drugs, biological products, and devices exported under section 802 of the act.* (1) Persons exporting a human drug, biological product, or device under section 802 of the act, other than a drug, biological product, or device for investigational use exported under section 802(c) of the act, or a drug, biological product, or device exported in anticipation of marketing authorization under section 802(d) of the act, shall provide written notification to FDA. The notification shall identify:

(i) The product's trade name;

(ii) If the product is a drug or biological product, the product's abbreviated or proper name or, if the product is a device, the type of device;

(iii) If the product is a drug or biological product, a description of the product's strength and dosage form or, if the product is a device, the product's model number; and

(iv) If the export is to a country not listed in section 802(b)(1) of the act, the country that is to receive the exported article. The notification may, but is not required to, identify countries listed in section 802(b)(1) of the act or state that the export is intended for a listed country without identifying the listed country.

(2) The notification shall be sent to the following addresses:

(i) For biological products and devices regulated by the Center for Biologics Evaluation and Research—Division of Case Management (HFM–610), Office of Compliance and Biologics Quality, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, rm. 200N, Rockville, MD 20852–1448;

(ii) For human drug products—Division of Labeling and Nonprescription Drug Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855–2737;

(iii) For devices—Division of Program Operations (HFZ–305), Center for Devices and Radiological Health, Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850.

(e) *Recordkeeping requirements for products subject to section 802(g) of the act.* (1) Any person exporting a product under any provision of section 802 of the act shall maintain records of all drugs, biological products, and devices exported and the countries to which the products were exported. In addition to the requirements in paragraph (b) of this section, such records include, but are not limited to, the following:

(i) The product's trade name;

(ii) If the product is a drug or biological product, the product's abbreviated or proper name or, if the product is a device, the type of device;

(iii) If the product is a drug or biological product, a description of its strength and dosage form and the product's lot or control number or, if the product is a device, the product's model number;

(iv) The consignee's name and address; and

(v) The date on which the product was exported and the quantity of product exported.

(2) These records shall be kept at the site from which the products were exported or manufactured, and be maintained for the same period of time as required for records subject to good manufacturing practice or quality systems regulations applicable to the product. The records shall be made available to FDA, upon request, during an inspection for review and copying by FDA.

Dated: March 1, 2001.

Ann M. Witt,

Acting Associate Commissioner for Policy.

Dated: April 10, 2001.[1]

Timothy E. Skud,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 01–31026 Filed 12–18–01; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[KS 0145–1145a; FRL–7120–2]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the state of Kansas' section 111(d) plan for controlling emissions from existing hospital/medical/infectious waste incinerators. The state revised its existing plan to establish increments of progress and a new compliance date for two HMIWI sources. Approval of the revised state plan will ensure that these requirements are Federally enforceable.

DATES: This direct final rule will be effective February 19, 2002. unless EPA receives adverse comments by January 18, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of documents relative to this action are available for public inspection during normal business

[1] **Editorial Note:** This document was received at the Office of the Federal Register on December 12, 2001.

hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Information regarding this action is presented in the following order:

What Is a 111(d) Plan?

Section 111(d) of the Clean Air Act (CAA) requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources.

What Are the Regulatory Requirements for HMIWIs?

Standards and guidelines for new and existing HMIWIs were promulgated under the authority of sections 111 and 129 of the CAA on September 15, 1997 (62 FR 48374). These standards are 40 CFR part 60, subpart Ec for new sources, and 40 CFR part 60, subpart Ce for existing sources.

The subpart Ce EG is not a direct Federal regulation but is a ''guideline'' for states to use in regulating existing HMIWIs. The EG requires states to submit for EPA approval a section 111(d) state plan containing air emission regulations and compliance schedules for existing HMIWIs.

What Changes Did the State Make to Its 111(d) Plan?

We originally approved the state's HMIWI 111(d) plan on July 14, 2000 (65 FR 43702), and it became effective on September 12, 2000. Sources were required to be in compliance within one year of the effective date of EPA approval of the state plan, i.e., September 12, 2001, or in any case no later than September 15, 2002. Sources may petition the state for a compliance date extension beyond September 12, 2001, if they are planning to install air pollution control equipment and if they commit to an increment of progress schedule. The final compliance date cannot extend beyond September 15, 2002, however.

Two HMIWIs in Kansas, one each located in Johnson and Wyandotte Counties, requested that they be granted until September 15, 2002, or an additional year, to come into compliance. Both sources justified the need for additional time in order to install air pollution control equipment and related operating and monitoring equipment. The state has approved these requests.

The state has included increments of progress dates in the sources' compliance schedules. Dates have been established for: award of contracts, commence on-site construction, complete initial startup, calibration and adjustment, conduct required performance testing, and demonstrate final compliance. The final compliance date is September 15, 2002.

These compliance extensions constitute a revision to the compliance date that was contained in the approved 111(d) plan. Thus, the state has submitted the new compliance schedules for these two sources to us for approval as an amendment to its 111(d) plan.

This action will ensure consistency between the state plan and the approved Federal plan, and ensure Federal enforceability of the approved state plan.

What Action Are We Taking in This Action?

We are approving these revisions to the state's HMIWI 111(d) plan. We are processing this action as a final action because the revisions make routine changes to the existing plan which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves a state action as meeting Federal requirements and imposes no additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves a state action and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state action relating to a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state plan submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove state submissions for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews state submissions, to use VCS in place of state submissions that otherwise satisfy the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in

accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 19, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects 40 CFR Part 62

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 7, 2001.

James B. Gulliford,

Region Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R—Kansas

2. Section 62.4179 is amended by adding paragraph (d) to read as follows:

§ 62.4179 Identification of plan.

* * * * *

(d) Amended plan for the control of air emissions from hospital/medical/infectious waste incinerators submitted by the Kansas Department of Health and Environment on October 25, 2001. This plan revision establishes a final compliance date of September 15, 2002, for two incinerators in Johnson and Wyandotte Counties, Kansas. The effective date of the amended plan is February 19, 2002.

[FR Doc. 01–31238 Filed 12–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–301179A; FRL–6814–4]

RIN 2070–AB78

Sethoxydim; Pesticide Tolerance Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of October 10, 2001, establishing time-limited tolerances for combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide). Inadvertently the regulatory text showed the maximum permissible level for residues of sethoxydim in or on ''Sheep, mbyp'' at ''0.5 ppm''. This document makes a technical correction to the regulatory text of the tolerance regulation in 40 CFR 180.412(b) to correctly show the maximum permissible level for residues of sethoxydim in or on ''Sheep, mbyp'' at ''1.0 ppm''.

DATES: This regulation is effective December 19, 2001. Objections and request for hearings, identified by docket control number OPP–301179A, must be received by EPA on or before February 19, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method provided in Adverse comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit II. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–301179A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9364; e-mail address: pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the**Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://

www.access.gpo.gov/nara/cfr/cfrhtml_180/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301179A. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. What Does this Technical Correction Do?

A final rule to establish time-limited tolerances for combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) on various commodities was published in the **Federal Register** on October 10, 2001 (66 FR 51587) (FRL–6802–3). The preamble correctly stated that sethoxydim and its metabolites was to be established for ''Sheep, mbyp'' at ''1.0 ppm''. Inadvertently in the regulatory text it was listed at ''0.5 ppm''. This correction is being published to establish a time-limited tolerance for ''Sheep, mbyp'' at ''1.0 ppm'' in 40 CFR 180.412(b).

IV. Do Any of the Regulatory Assessment Requirements Apply to this Action?

This final rule implements a technical correction to the CFR, and it does not otherwise impose or amend any requirements. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 29, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, 371.

2. In § 180.412, the table in paragraph (b) the entry for ''sheep, mbyp'' is corrected to read as follows:

§ 180.412 Sethoxydim; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
* * * * *		
Sheep, mbyp	1.0	12/31/03

* * * * *

[FR Doc. 01–30917 Filed 12–18–01; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

41 CFR Part 61–250

RIN 1293–AA07

Annual Report From Federal Contractors

AGENCY: Veterans' Employment and Training Service, Department of Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Veterans' Employment and Training Service (VETS) is amending its regulations implementing the VETS–100 reporting requirement. This amendment revises the final rule that was published on October 11, 2001 (66 FR 51998), and that went into effect on November 13, 2001, to withdraw from the rule the specification for how Federal contractors filing the report were to calculate the maximum and minimum number of employees. The basic requirement to report the maximum and minimum number of employees remains.

DATES: *Effective Date:* This regulation is effective December 19, 2001.

Comment Period: Comments must be received on or before January 18, 2002.

ADDRESSES: Comments should be sent to Norman Lance, Chief, Investigations and Compliance Division, VETS, by regular mail at the U.S. Department of Labor, Veterans' Employment and Training Service, Federal Contractor Program FRN-Comments—Interim Final Rule, Federal Contractor Program Office, 6101 Stevenson Avenue, Alexandria, VA 22304, or by e-mail at *Lance-Norman@dol.gov.* Written comments limited to 10 pages or fewer also may be transmitted by facsimile (FAX) at (202) 693–4755. Receipt of submissions, whether by U.S. mail, e-mail or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693–4731(VOICE)

FOR FURTHER INFORMATION CONTACT: Norm Lance, Chief, Investigations and Compliance Division, VETS, at (202) 693–4731 or by e-mail at *Lance-Norman@dol.gov.* Individuals with hearing impairments may call (800) 670–7008 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

The Veterans Employment Opportunities Act (VEOA) was signed into law in October 1998. The statute extended the affirmative action and reporting responsibilities of Federal contractors and subcontractors. Among other changes, the VEOA added the requirement that contractors and subcontractors report the maximum number and the minimum number of persons they employed during the reporting period to the Secretary of Labor.

On October 5, 2000, VETS published a Notice of Proposed Rulemaking (65 FR 59684) to implement the provisions of the VEOA, including the requirement for reporting the minimum and maximum number of employees. The Notice of Proposed Rulemaking did not contain guidance on how covered contractors were to determine the minimum and maximum number of employees. One commenter asked for clarification about how to determine the minimum and maximum number of employees. The commenter asserted that there could be continuous changes in employment levels at a company and that it was unclear exactly when the minimum and maximum number of employees had to be determined. To respond to the concerns of the commenter, VETS clarified the regulation language by adding the following language to the final rule:

The minimum and maximum number of employees reportable at each hiring location during the period covered by the report must be determined as follows: Contractors must review payroll records for each of the pay periods included in the report. The minimum number of employees is the total number of employees paid in the payroll period in which the contractor had the fewest number of employees. The maximum number of employees is the total number of employees paid in the payroll period in which the contractor had the greatest number of employees.

This new language was inserted in section 61–250.10(a)(3), and also in section 61–250.11 under the paragraph entitled ''Maximum and minimum number of employees.'' (66 FR 52004–52005, October 11, 2001).

It has been brought to the attention of VETS that the revised language might have inadvertently increased the record keeping burden on some contractors. VETS has learned that it might be difficult to match up payroll periods, employees, and physical VETS–100 reporting locations in the way contemplated by the final rule. For example, some companies use separate payrolls and pay dates for nonexempt and exempt employees within a single establishment. Other companies maintain separate payrolls and pay dates for bargaining unit employees and nonbargaining unit employees. Some companies temporarily remove employees who are on short-term leaves of absence from their payrolls. These absent employees, however, still may be considered ''active'' employees for purposes of the VETS–100 report.

To permit contractors flexibility in how they determine the maximum and minimum number of employees, VETS is making two amendments to part 61–250. In each place in which the instructions quoted above were placed in the rule, the instructions now are being withdrawn. Accordingly, contractors will be required to report the maximum and minimum number of

employees, but the method by which the count must be conducted will not be mandated.

However, VETS expressly requests comments on the methods contractors intend to use to calculate the minimum and maximum number of employees. VETS plans on publishing this information, either in regulatory format or as guidance to contractors, for future reporting cycles.

II. Revised Sections

Section 250.10 What Reporting Requirements Apply to Federal Contractors and Subcontractors, and What Specific Wording Must the Reporting Requirements Contract Clause Contain?

Section 61–250.10(a)(3). The language quoted above that specified how contractors were to determine the maximum number and minimum number of employees is withdrawn. Contractors are still obligated to provide a count of the maximum and minimum number of employees. However, contractors may use any reasonable method for calculating and determining the maximum number and minimum number of employees during the reporting period.

Section 61–250.11 On What Form Must the Data Required by This Part Be Submitted?

The language quoted above, which appears as a paragraph entitled ''Maximum and minimum number of employees'' under section 250.11, is withdrawn. All other instructions in this section on how to prepare the VETS–100 report remain intact.

III. Regulatory Procedures

Executive Order 12866

The Department of Labor has determined that this Interim Final Rule is not economically significant as defined in the Regulatory Flexibility Act. However, this rule has been reviewed by the Office of Management and Budget under Executive Order 12866. This rule will not: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency, or otherwise interfere, with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, a regulatory impact analysis is unnecessary.

Congressional Review Act

This Interim Final Rule is not a major rule for purposes of the Congressional Review Act.

Unfunded Mandates

Executive Order 12875—This Interim Final Rule does not create an unfunded Federal Mandate upon any State, local, or tribal government.

Unfunded Mandate Reform Act of 1995—This Interim Final Rule does not include any Federal mandate that may result in increased expenditures by State, local and tribal governments in the aggregate of $100 million or more, or increased expenditures by the private sector of $100 million or more.

Executive Order 13132

These regulations have been reviewed in accordance with Executive Order 13132 regarding Federalism. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the requirements of section 6 of Executive Order 13132 do not apply to this rule.

Regulatory Flexibility Act

This Interim Final Rule does not substantially change the existing obligations of Federal contractors or subcontractors. The Department of Labor certifies that the rule will not have a significant economic impact on a substantial number of small business entities. Therefore, no regulatory flexibility analysis is required.

Paperwork Reduction Act

The inclusion of guidelines in the October 11, 2001, final rule on how to determine the minimum and maximum number of employees may have inadvertently resulted in greater burden than that reflected in the rule. By removing the portion of the rule that specified how the minimum and maximum number of employees was to be computed, this Interim Final Rule restores the burden to that reflected in the final rule.

Absence of Notice of Proposed Rulemaking/Effective Date of This Interim Rule

The Department of Labor has determined that it is unnecessary and contrary to the public interest to publish a Notice of Proposed Rulemaking (NPRM) regarding this amendment. This Interim Final Rule will prevent covered contractors from having to comply with a possibly significant and inadvertent increase in their recordkeeping burdens. The portion of the October 11 rule that is being removed simply provided information on how the maximum and minimum number of employees was to be computed; removing that information nevertheless retains unchanged the fundamental statutory requirement that contractors report their maximum and minimum employment.

For the above-listed reasons, the Department of Labor finds that publishing an NPRM, and providing a period for notice and comment, before implementing this Interim Final Rule is unnecessary and contrary to the public interest, and therefore pursuant to 5 U.S.C. 553(b)(B) good cause exists for publishing these regulations as an Interim Final Rule. Furthermore, the Department finds that the above-listed reasons also constitute good cause under 5 U.S.C. 553(d)(3) for waiving the customary requirement to delay the effective date of a regulation for 30 days following its publication. Therefore, this Interim Final Rule is effective immediately upon publication.

List of Subjects in 41 CFR Part 61–250

Government contracts, Reporting and recordkeeping requirements, Veterans.

Signed at Washington, DC, this 13th day of December 2001.

Frederico Juarbe, Jr.,

Assistant Secretary of Labor for Veterans' Employment and Training Service.

For the reasons set forth in the preamble, 41 CFR part 61–250 is amended as set forth below:

PART 61–250—ANNUAL REPORT FROM FEDERAL CONTRACTORS

1. The authority citation for part 61–250 continues to read as follows:

Authority: 38 U.S.C. 4212(d).

§ 250.10 [Amended]

2. Section 250.10 is amended in the contract clause by removing all of paragraph (a)(3) except for the first sentence.

§ 250.11 [Amended]

3. Section 250.11 is amended in the contract clause by removing the paragraph entitled ''*Maximum and minimum number of employees:*'' which appears under the heading entitled

''Information on Employees (Veterans and non-veterans).''

[FR Doc. 01–31188 Filed 12–18–01; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 950616159–1292–06; I.D. 022601D]

RIN 0648–ZA16

Northeast Multispecies Fishery; Fishing Capacity Reduction Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; announcement of a fishing capacity reduction program and solicitation for bids from participants.

SUMMARY: NMFS issues this interim final rule to establish a voluntary fishing capacity reduction program (FCRP) for the Northeast multispecies fishery that permanently removes multispecies limited access fishing permits. Permit holders who would like to participate may submit bids, which will be ranked based on the amount of the bid and an estimate of the fishing capacity represented by the permit. The intent of this program is to obtain the maximum sustained reduction in fishing capacity at the least cost. As this is a limited access fishery, the capacity removed by the program cannot be replaced. It is being implemented by an interim final rule to allow public comments, in particular on its related Environmental Assessment and on the determination under the Regulatory Flexibility Act that this action will not have a significant economic impact on a substantial number of small entities.

DATES: Effective January 18, 2002. NMFS will accept bids through February 19, 2002. Comments must be received on or before January 18, 2002.

ADDRESSES: Written comments should be sent to National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930, Attn: Jack Terrill. Comments involving the reporting burden estimates or any other aspects of the collection-of-information requirements contained in this interim final rule should be sent to both Jack Terrill and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer). Copies of the Environmental Assessment may be obtained from Jack Terrill, Fishery Administrator, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, Fishery Administrator, (Jack.Terrill@noaa.gov) 978–281–9136 or Daniel Morris, Special Projects Officer, (Daniel.Morris@noaa.gov) 978–281–9237. This **Federal Register** document is also accessible via the Internet at the Office of the Federal Register website at *http://www.access.gpo.gov/su—docs/aces/aces140.tml*.

SUPPLEMENTARY INFORMATION:

I. Background

On July 13, 2000, the President signed the Military Construction Appropriations Act for FY 2001 (Act) (Pub.L. 106–246), which authorized a $10 million emergency supplemental appropriation for disaster assistance for the Northeast multispecies fishery. The funds are intended to compensate industry permittees who choose to participate in a program aimed at reducing the permitted fishing capacity in the multispecies fishery. NMFS published a notice of the proposed program, solicited comments on the proposal, and announced nine public meetings throughout New England at 66 FR 17668, April 3, 2001. NMFS received 21 written comments, one of which was signed by 88 people. The nine public meetings were attended by approximately 130 people; NMFS responds to the comments below. Further background for this program is provided in the April 3, 2001, **Federal Register** notice and is not repeated here.

II. Summary of Comments and Responses

In general, commenters expressed support for the proposed program, which would compensate holders of limited access multispecies permits for the voluntary surrender of their permits. Separate from this FCRP, capacity reduction in the multispecies fishery is under consideration by the New England Fishery Management Council (Council) and is closely related to many other initiatives, including gear and time/area restrictions, aimed at promoting the recovery of depressed groundfish stocks. During the public meetings related to the FCRP, NMFS received many comments regarding measures under consideration by the Council. These comments have been shared with Council staff. Except where the comments are relevant to this FCRP, issues related to the Council's activities are not addressed in the following paragraphs.

Relation of the FCRP to Amendment 13. Among its many goals, Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP), which has been under development by the Council for about 2 years, aims to address issues related to over-capacity in the fishery. The Council developed an ad hoc Capacity Committee to develop management alternatives to reduce the number of excess days-at-sea (DAS) allocated in the fishery. Many commenters expressed concern about the timing of the FCRP with respect to Amendment 13. Some suggested that the FCRP should come after the Council's actions. They argued that Amendment 13 could devalue and/or invalidate latent permits, and if so, then the FCRP could remove even more of the permits or, as others suggested, the FCRP would be irrelevant. Some commenters insisted that the FCRP should come before the implementation of Amendment 13, suggesting that the Council's capacity reduction proposals could be inappropriate or even rendered moot, if the FCRP is very successful. In either case, the uncertainty of the ultimate proposed measures of Amendment 13 and the timing of those measures are confounding factors for fishers who must decide whether or not to participate in the FCRP.

The statutory language establishing the FCRP requires that NMFS implement the program in a timely manner, and NMFS has attempted to do that. NMFS acknowledges that the uncertainty regarding the capacity reduction measures in Amendment 13 and the timing thereof may make it difficult for some permittees to determine whether or not to participate in the FCRP and at what level to set their bids.

Tax implications. Several commenters asked about the tax implications of participating in the program, suggested that the funds should be tax exempt, or recommended that the payout be spread across several years to reduce the tax burden in any 1 year. Others claimed that taxes could be deferred if the funds are put in the Fishing Vessel Capital Construction Fund (CCF)(46 U.S.C. 1177).

Funds received through participation in the FCRP may be considered taxable income. The type of income and the tax rate would be determined by the participant's tax situation, and it would be the responsibility of the program participant to seek appropriate tax

advice and to comply with local, state, and Federal tax regulations. NMFS cannot accommodate requests to disburse funds under the FCRP over 2 tax years. To expedite the payments and provide consistent service to all applicants whose bids are accepted, many of whom may not desire staged disbursal, NMFS will only distribute funds to FCRP participants through a single payment. The CCF is available for the deferral of taxes on capital gains realized only through the sale of fishing vessels, and not permits. The funds received through the FCRP would not qualify and could not be placed in the CCF.

Re-entry of participants. Many commenters addressed the issue of FCRP participants possibly re-entering the multispecies fishery. Some noted that vessel buyout programs have been criticized for allowing program participants to use the proceeds of the boat/permit sale to buy new boats, gain new permits and re-enter the fishery. Some claim that this practice is unscrupulous and that it undercuts the perceived benefits of the FCRP. Commenters recommended prohibitions on re-entry from several years, to 10 years, to a term based on the rebuilding of fish stocks. Others recommended disincentives to dissuade FCRP participants from re-entering the fishery, such as reducing their DAS by 50 percent on subsequent permits or otherwise severely limiting the fishing effort that could be exerted under the new permit.

The purpose of the program is not to remove individuals or corporations from the fishery; it is to remove excess capacity as it is represented by limited-access multispecies permits. Unlike vessel buyout programs in the past, the FCRP established by this rule will compensate fishers for surrendering only their limited access Northeast multispecies permits. NMFS does not intend to restrict FCRP participants from working in the multispecies fishery or any other fishery in the future. Besides, restrictions on future fishing by FCRP participants would be extremely difficult to detect and enforce. The variations are many and would be very difficult to track. It is clear, however, that the multispecies fishing histories associated with the permits surrendered under this FCRP are prohibited from being used or referenced for qualification in any future multispecies permitting program. Though at this time no such programs are foreseen, NMFS will maintain records of FCRP participants to enforce this stipulation of the program. Whether or not the FCRP participant resumes working in the fishery, a permit and the capacity it represents will have been removed from the finite pool of capacity forever; thus meeting the goal of the FCRP.

Some commenters stated that Charter/Party vessels should be excluded from the program. Because there is an open access category for Charter/Party vessels, these vessels could surrender a limited access permit, and then acquire an open access permit and remain in the fishery. Thus, the surrender of the permit, they claimed, would have no net effect on capacity.

The FCRP aims to reduce commercial fishing capacity in the multispecies fishery. A vessel owner may currently hold both a multispecies limited access permit and an open access Charter/Party permit, and surrender of the former would be consistent with the goals of this program. Open access Charter/Party vessels are restricted by gear (two hooks per angler) and passenger capacity and are prohibited from selling any catch. While new fishing effort under the Charter/Party permit category may slightly confound the benefits of the FCRP, the restrictions on the Charter/Party category should minimize the net effect of effort re-entry. NMFS does not intend to restrict vessels with Charter/Party permits from participation in the FCRP, nor does NMFS intend to change the access status of the Charter/Party permit category.

Restrictions on the use of the awarded funds. Several commenters were concerned that the funds awarded under the FCRP might be used to upgrade fishing vessels and would lead to the more effective prosecution of the multispecies fishery or other fisheries. Some suggested that the funds be required to go into an Individual Retirement Account or into some other similarly restricted fund. Other commenters stated that the funds should come with no restrictions on future use. FCRP participants, they said, may want to buy a safer boat, pay crew, or otherwise enhance their businesses.

NMFS concurs that the funds, once awarded, should not be restricted in how they are subsequently used. Vessel upgrades are limited by existing regulations.

Effort displacement. Comments were received from the Mid-Atlantic Fishery Management Council, a state marine fisheries commissioner, and others expressing concern over the possibility that the FCRP will displace effort into other fisheries. The Council suggested that the FCRP give highest priority to ''purchasing permits from vessels possessing groundfish permits only or those willing to give up their suite of permits.'' Another commenter worried that the FCRP would result in vessel abandonment and that communities would be left with derelict vessels to dispose of.

Though participation in the FCRP is open to any limited-access multispecies permit holder, the most likely participants are those for whom the permit represents little opportunity to land regulated groundfish. The permits of fishers who are working in other fisheries or who have moved out of the industry altogether are likely to represent the least utility and are more likely to be surrendered under the FCRP. Because most FCRP participants have already moved out of the multispecies fishery and into other activities, the program is not likely to result in a measurable shift of fishing effort. In the long term, the surrender of the Federal multispecies permit limits the FCRP participant's future fishing options, should the permittee someday wish to alter or diversify his/her fishing activity. Effort that might have returned to the multispecies fishery will be applied in another activity. The likelihood and timing of such an occurrence is impossible to predict.

Finally, because the program allows participants to retain all state and Federal permits other than the one surrendered, it is likely vessels will continue to be used. It remains the responsibility of the vessel owners to dispose of unused property in accordance with local, state, and Federal regulations; if a vessel has fallen into disuse, it is conceivable that some of the proceeds from the FCRP may actually help a boat owner comply with disposal regulations.

Concerns about the impacts on small communities. A few commenters asked that NMFS consider the potential impacts the FCRP is likely to have on communities that support mostly small fishing boats. Many small fishing businesses rely on a diversity of fishing activities over the course of a year and/or over a career to exploit changing resource and market conditions and many other factors. The surrender of a Federal multispecies permit limits the fisher's options and may create a dependence on one fishery. Commenters suggested that the FCRP should not result in disproportionate acquisition of permits from certain geographical regions.

Participation in the FCRP is strictly voluntary. A community that wants to maintain Federal multispecies permits among its local fleet should consider coordinating its members' participation (or non-participation) in the program. At present, Federal multispecies permits in

no way restrict the port or geographic region within the United States from which a permitted vessel may work. Private sales or exchanges of permitted vessels may be made across the region and between ports. NMFS cannot control where the permits accumulate or decrease through private exchanges and will not limit participation in the FCRP to a certain percentage of permittees per community or area.

Value with respect to recency of use. NMFS received many comments regarding the value and removal priority that should be given to permits as a function of their recency of use. Some claimed that permits in a confirmation of permit history (CPH) status (a permit history held by a person who owned a vessel with a fishing history that qualified for a limited access permit, but whose vessel has been sunk, destroyed, or transferred (without permits) to another person, and who has applied and received a CPH) should be given the highest priority for removal, as they represented an unknown quantity; others countered that the CPH permits are the least likely to be activated and should thus be given the lowest priority. Some commenters called for mandatory revocation of permits for which no landings have been recorded; others countered that recency of use should have no bearing on the value of permits and that fishers who have moved out of the groundfish fishery at the encouragement of NMFS and the Council while the resources have been at historically low levels should not be penalized.

NMFS has considered alternatives to the final FCRP that would take into account recency of use in the multispecies fishery or other fisheries. NMFS considered bid-ranking processes and bid-capping equations that gave greater credit or value to permits that have logged landings since 1994. However, recency of use as it relates to ease or likelihood of reactivation is a variable that NMFS cannot quantify with confidence and consistency sufficiently enough to effectively inform program priorities. This FCRP takes a very long view of the fishery and assumes that over time all the permits will have a roughly equal probability of being reactivated, and the value of permits should not be weighted with respect to recency of use.

Furthermore, NMFS believes that the FCRP should be implemented without any suggestion that fishers must either use their permits, surrender them, or have them withdrawn for non-use. Any reliance by NMFS on recency of use as a factor for valuing permits may be perceived as contrary to this principle and may even prompt permit holders to reenter the fishery. Participation in the FCRP is voluntary.

Remove DAS or otherwise reduce portions of permits. Several comments were received calling on NMFS to use the FCRP funds to compensate fishers for surrendering a percentage of their authorized DAS, rather than forfeiting the permit entirely. A few commenters suggested that the funds be used to compensate fishers who would stay out of the fishery for some period, 10 years, for example, but would be reauthorized to work in the fishery thereafter.

The statutory language that established the FCRP requires that NMFS compensate fishers for the permanent revocation of their limited access multispecies fishing permits.

Establishing a fixed rate, bidding, ranking bids. NMFS proposed that the FCRP be implemented by soliciting bids from permittees for the amount of compensation they would like to receive for voluntary surrender of their limited-access multispecies permits. NMFS suggested that the bids be ranked by dividing the bid amount by a factor representing some measure of the fishing capacity authorized under the permit. Most commenters were supportive of this process in general and recognized it as a means of ensuring that the most capacity is removed from the fishery for the least amount of money. (The ranking factors are addressed under another sub-section of this notice.) Some commenters, however, recommended that NMFS set a fixed rate for permits and make an offer to all permit holders. They suggested that, should the number of flat-rate acceptances equate to an amount greater than the authorized program ($10 million), then NMFS should use vessel capacity to rank the permits and prioritize payments.

NMFS has considered this idea, but has declined to implement it for several reasons. The baselines and DAS associated with the permits range rather widely and affect the value of the permits accordingly. A fixed rate, set by NMFS, would be an appropriate value for only a small subset of the permits, and either would be too small to interest one segment of the fishery or would overpay the other. Permit holders are more likely than NMFS to have a good idea of what their permit is worth to them, and the reverse bid process as exercised in the vessel buyout programs of the past has been considered successful.

Monkfish permits and the FCRP.. Several commenters noted that, to qualify for two of the limited access monkfish permit categories, applicants were required to hold a valid limited access multispecies or scallop permit and have records of monkfish landings. Commenters asked whether, if the permit holder were to surrender a multispecies permit under the FCRP, the limited access monkfish permit would be invalidated.

It is correct that to qualify for a Category C or D limited access monkfish permit vessel owners were required to have a multispecies or scallop limited access permit and certain levels of monkfish landings. If a fisher (who does not also hold a scallop permit) surrenders the qualifying multispecies permit under the FCRP, the monkfish permit would not be invalidated, but would be moved into a different limited access category (C to A, and D to B), and would be subject to the regulations of the new category. Holders of monkfish permits should be familiar with these requirements when deciding whether to participate in the FCRP.

III. Ranking Bids

The goal of the FCRP is to remove the greatest amount of fishing capacity from the Northeast multispecies fishery in the most cost effective manner. In support of this goal, and assuming that the bids submitted to the FCRP will exceed the funds that are available, NMFS must rank the bids with respect to relative vessel capacity. In other words, NMFS must rank and accept bids based on the least cost per unit of capacity.

NMFS considered two methods for ranking bids under the proposed FCRP, using capacity estimates derived through data envelopment analysis (DEA) or a simplified relative capacity indicator based upon linear calculation of permit baseline characteristics. Each is described in detail in the April 3, 2001, **Federal Register** notice. An important element of the FRCP public meetings was to solicit public input on the two ranking methods. Specifically, NMFS sought input from the public regarding the weighting factors (relative importance) for each of the baseline characteristics for use in the simplified method.

NMFS received many comments regarding the proposed bid ranking methods. In general, the public preferred the idea of the simplified method, as it seemed more direct and easier to understand than the DEA method. However, commenters failed to give consistent guidance about weighting factors for the simplified method and the relative importance of the various baseline characteristics. Vessel designs and fishing strategies vary widely throughout the region and no simple equation could be developed

that would give consistent relative capacity rankings. For example, while horsepower may be a prime factor in the capacity of large trawlers, gillnetters may be less dependent on horsepower and limited only by the volume of their holds (as suggested by net tonnage), and some small hook fishing boats may have the least actual capacity, but may have excess horsepower to accommodate faster runs to the fishing grounds. Thus, application of the simplified method would not be simple.

For the FCRP, NMFS has elected to employ the DEA model. Using DEA, NMFS will prepare an estimate of all potential bidders' vessel capacity to harvest multispecies. This estimate of daily fishing capacity (EFC) would be an inference, based on capacity estimates for similarly configured vessels that are actively working in the fishery. This is the method that is gaining national and international acceptance as the best estimate of fishing capacity and is used by NMFS in reports on fishing capacity to Congress.

Applications to participate in the FCRP will be scored by dividing the bid by the product of the vessel's daily estimated capacity and its allocated DAS [Score = bid ÷ (EFC x DAS)]. The lowest score would represent the least cost per unit capacity and would be ranked highest. Scores would then be listed and selected in ascending order.

Most of the limited access multispecies permits are under a fleet DAS management scheme and are presently authorized 88 DAS. Less than 10 percent of the permits are in an Individual DAS category and may be authorized more than 88 DAS per year. Multiplying the EFC by the allocated DAS will reflect the additional fishing opportunity represented by these permits. Permits in limited access Category C, Small Boat Exemptions, are associated with vessels 30 ft (9.1 m) or less in length overall (LOA) and have unlimited DAS. To weight these bids appropriately, NMFS will use the category's fleet average number of DAS per year. If bids are received from holders of permits in this category, NMFS will analyze vessel trip reports to determine the 3 consecutive years with the highest used DAS per year per vessel, and from these 3 years will determine the average DAS per year for Category C permits.

From the July of 1998 through June 1999, NMFS initiated the Baseline Audit Program for multispecies and scallop limited access permit categories. NMFS contacted permittees who had not undergone a vessel replacement and asked them to verify and/or correct the permit baseline information in NMFS' records. For the purpose of the FCRP, NMFS considers information on file to be the final numbers used for vessel baseline. The audit program did not include all CPH status permits. Some CPH baselines have been verified, but some have not. If owners of CPH status permits without verified baselines want to participate in the FCRP, NMFS will work with the applicant to establish or verify the vessel baseline in a manner consistent with the baseline audit program. For all other FCRP participants, NMFS intends to use the baseline information on file on the date of publication for the FCRP.

IV. Setting Limits on Bids

This FCRP allows permit holders to set their bids at any dollar amount, and a competitive bid ranking process will be used to determine which bids represent the better value for the Government and thus will be accepted first. The competitive nature of the process is the first incentive for permit holders to make reasonable bids. If bids are received for permits from two similarly configured vessels with equal DAS allocation, the lower bid will be the higher ranked of the two and will have a greater chance of being accepted. Therefore, permit holders should submit bids that are reasonable.

Some participants at the public meetings asked if NMFS intends to set a maximum limit on bids and asked if NMFS will award funds to permit holders as long as funds are available, even if the bids are unreasonably high. Commenters noted that NMFS may receive bids that greatly exceed accepted values of permits and, if funds remain available, NMFS may need to justify acceptance or non-acceptance of such bids.

The setting of bids should depend on the value and risks the permit holder associates with the business opportunity represented by the permit. As one suggestion of the reasonableness of bids, NMFS has examined the classified advertisements in industry magazines and newspapers. While permits, technically, are not transferable, in the private sector Federal fishing permits are commonly exchanged for money through paper transactions for vessel transfers. Over the last year, classified listings in national and regional publications reflected values for suites of Federal permits including the limited access Northeast multispecies permits from $10,000 to $65,000. The amount advertised varied with respect to the vessel's baseline and the number of additional permits included in the sale. While by no means a complete survey of the value of limited access permits, the examples from the industry publications may assist permit holders in the development of their bids and may indicate to NMFS the reasonableness of bids.

NMFS also has developed a method to set a quantitative limit on the bid:capacity ratio. While this method will not set a maximum dollar amount on bids, it should encourage FCRP participants to set reasonable bids and should help identify and disqualify those bids that do not represent a good value for the Government. As noted above, applications will be ranked by dividing the bid amount by the product of EFC and the allocated (or average, for Category C) DAS. The resulting scores will be listed in ascending order. The median value, 50th percentile of the scores, will be multiplied by a capping factor of 1.5 to establish the maximum score value that NMFS will accept. Because this quantitative limit is a relative value determined by bids received and the distribution of the bid:capacity ratios, it cannot be determined beforehand. The use of this quantitative cap should further influence FCRP participants to set bids that are not unreasonably high.

The use of this relative cap has its limits, and NMFS may use the aforementioned qualitative measures of reasonableness (private sector purchase prices) to validate the results of the capping method. As noted, for the quantitative limit calculation, NMFS intends to use the 50th percentile of the scores and a capping factor of 1.5. These values were developed through an analysis of the results of the two Northeast multispecies vessel buyout programs during the late 1990's. If the distribution of scores in this FCRP is significantly different from the distribution of the vessel buyout ranking factors, or if all the bids received are exceptionally high, the quantitative method will not be an appropriate measure of reasonableness. NMFS maintains the discretion to accept or reject bids based on the combination of these measures of reasonableness, as well as the professional judgement of NMFS' staff and advisors.

V. How to Apply

A. Notification

This interim final rule serves as notification of the program to all holders of Northeast multispecies limited access fishing permits. In addition to this official notification, NMFS will send letters to all holders of current limited access multispecies permits and CPH status announcing the program and soliciting bids. The letter will include

materials to be used for developing and submitting bids and an EFC for the permit as determined through the DEA. Permit holders who do not receive a letter may contact NMFS for their EFC and FCRP bid submission details.

B. Eligibility

1. NMFS intends to consider applications to the FCRP only from holders of Federal multispecies permits in a limited access category or CPH status. Valid multispecies limited access permits are those limited access permits held by vessels meeting the eligibility requirements and maintained by annual renewal per 50 CFR 648.4(a)(1)(i). To be valid for the purposes of the FCRP, a permit must be free of all permit sanctions, pending or otherwise, at the time that the bid is submitted, and at the time of closing.

2. A permit holder must be an individual who is a citizen or national of the United States; or a corporation, partnership, association (non-profit or otherwise), trust, or other nongovernmental entity; if such an entity is a citizen of the United States within the meaning of section 802 of the Shipping Act, 1916, as amended (46 U.S.C. App. 802).

a. Federal Government employees, including full-time, part-time, and intermittent personnel, and Fishery Management Council employees and members (or corporations owned by members) are not eligible to participate in the program.

b. Holders of permits that are the subject of outstanding and/or pending investigations, charges, and penalties are not eligible to participate in the program.

c. Vessel owners whose permitted vessel exceeds the permit baseline and authorized upgrades, per 50 CFR 648.4 (a)(i)(F), are not eligible to participate in the program.

3. When two or more parties share interest in the permit, the bidder must affirm in writing that he/she represents the other parties.

C. Submission of Bids

1. Permit holders are limited to one bid per permit. Permit holders who intend to participate in the FCRP must submit their bids using the materials provided by NMFS. Bids must be postmarked before February 19, 2002. NMFS will not accept bids received late, or by fax or e-mail.

2. Bidders must ensure that all written matter is legible. Bid amounts must be written out numerically and in longhand (as one would do on a bank check).

3. Bidders must verify their Northeast multispecies permits, and the histories associated with the permits.

4. Bidders electing to offer permits in addition to the Northeast multispecies permit should identify the additional permit in the space provided on the bid submission form. Offering of additional limited access permits will not affect a bid's ranking or the amount of the compensation to be paid, but may be used by NMFS as a tiebreaker.

VI. Bid Review and Scoring

After the bidding period closes, NMFS will rank the bids, as follows:

Step A. Identify Bid

The bid is the dollar amount submitted by the applicant on the application materials.

Step B. Calculate the Bid Ranking Score

Each bid received will be divided by the product of its respective EFC and allocated DAS to get the bid ranking score. For Category C permits, NMFS will use an average DAS determined as detailed in section III above. The lowest score will represent the least cost to the Government per unit of fishing capacity. NMFS will accept bids by beginning with the permit represented by the lowest score and will proceed in ascending order until all the funds are committed or until the cap for FCRP efficiency or other reasonableness measures are met. See also Section IV.

In the event that the scoring results in a tie, NMFS will give preference to the permit that represents the greatest fishing capacity. If the tie is between two permits representing equal capacity, NMFS will give preference to the participant offering to surrender additional limited access permits.

Step C. Disbursing Funds and Revoking Permits

1. NMFS, Northeast Region, will contact permit holders as soon as possible with the results of the bid ranking and will arrange for disbursal of the funds. The method of payment used will depend on the amount of the awards.

2. Permits and associated permit history will be considered invalid upon the permit holder's receipt of notification that the bid has been accepted in the FCRP. Such history will be invalidated from use to qualify for any future permitting programs in this fishery.

3. Applicants whose bids are accepted must complete and submit the following forms, which will be provided by NMFS, prior to disbursal of funds:

a. SF-3881, ''ACH Vendor/ Miscellaneous Payment Enrollment Form''

b. W-9, ''Request for Taxpayer Identification Number and Certification''

c. CD-511, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters: Drug-Free Workplace Requirements and Lobbying''

VII. Administrative Requirements

The Department of Commerce (''Department'') Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917) are applicable to this solicitation. Some key requirements are set forth below.

A. Federal Policies and Procedures. Applicants whose bids are accepted are subject to all Federal laws and Federal and Department policies, regulations and procedures applicable to financial assistance awards or procurement of goods and services.

B. False Statements. A false statement on any application materials is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

C. Delinquent Federal Debts. No award of Federal funds shall be made to an applicant who has an outstanding Federal debt or fine until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to the Department are made.

D. Pre-award Activities. If applicants incur any costs prior to an award being made, they do so solely at their own risk. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of the Department to cover pre-award costs.

E. Least Cost Provision. Through this program, NMFS has been tasked ''to obtain the maximum sustained reduction in fishing capacity at the least cost.'' If participation in this FCRP is insufficient to use up all the allocated funds, or if NMFS determines the bids are too high to satisfy the letter and intent of this ''least cost'' provision, then NMFS retains the discretion to reject bids, to close the FCRP, and to restructure it using the remaining funds to meet the statutory goals.

F. Additional Funds. If, before the end of the bid closing date, additional funds are appropriated by Congress for NMFS to disburse under the same terms and conditions as for this FCRP, then NMFS

will expend the additional funds in accordance with this program as established.

G. Release of Public Information. Information on the removed permits, accepted bids, and associated vessel may be released publicly after awards are made.

Classification

The Assistant Administrator for Fisheries (AA), NMFS, has determined that this interim final rule is consistent with the Military Construction Appropriations Act for FY 2001 (Pub.L. 106–246) and the Interjurisdictional Fisheries Act of 1986.

This interim final rule has been determined to be not significant for purposes of E.O. 12866.

Applications under this program are subject to E.O. 12372, ''Intergovernmental Review of Federal Programs''.

NMFS prepared an environmental assessment (EA) for this action and the AA concluded that there will be no significant impact on the human environment as a result of this interim final rule. A copy of the EA is available from NMFS (see **ADDRESSES**).

This interim final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by OMB under control number 0648-0376. Public reporting burden for preparation of the grant application is estimated to be one hour per response including the time for reviewing instructions, gathering and maintaining records, and completing and reviewing the collection of information. An additional two hour reporting burden is estimated for those applicants who are accepted by NMFS including time for submission of invalidated permits. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS (See **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this interim final rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). Although the economic impacts on small entities are not immediately quantifiable, as the mix of accepted bids can only be determined after bidding is complete, NMFS does not expect that this action would have a significant economic impact on a substantial number of small entities. As participation in the FCRP is voluntary, it is unlikely that entities would participate unless they accrued some benefit. Moreover, the retirement of permits, active and latent, is expected to benefit those fishermen remaining in the fishery, though the extent of that benefit is unclear at this time. As a result, a regulatory flexibility analysis was not prepared.

Authority: 16 U.S.C. 4107.

Dated: December 14, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–31262 Filed 12–18–01; 8:45 am]

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Proposed Rules

Federal Register
Vol. 66, No. 244
Wednesday, December 19, 2001

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[KS 0145–1145; FRL–7120–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Control of Emissions From Hospital/Medical/Infectious Waste Incinerators; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the state of Kansas' section 111(d) plan for controlling emissions from existing hospital/medical/infectious waste incinerators.

In the final rules section of the **Federal Register**, EPA is approving the state's submittal as a direct final rule without prior proposal because the Agency views this as noncontroversial and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

DATES: Comments on this proposed action must be received in writing by January 18, 2002.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: December 7, 2001.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 01–31239 Filed 12–18–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of New Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act of 1996, this annual notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the anti-kickback statute (section 1128B(b) of the Social Security Act), as well as developing new OIG Special Fraud Alerts.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 19, 2002.

ADDRESSES: Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–61–N, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–61–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, (202) 619–0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION:

I. Background

A. The OIG Safe Harbor Provisions

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce or reward business reimbursable under the Federal health care programs. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to 5 years. The OIG may also propose the imposition of civil money penalties, in accordance with section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a), or exclusions from the Federal health care programs, in accordance with section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements may be subject to criminal prosecution or administrative sanction. In response to the above concern, the Medicare and Medicaid Patient and Program Protection Act of 1987, section 14 of Public Law 100–93, specifically required the development and promulgation of regulations, the so-called ''safe harbor'' provisions, specifying various payment and business practices which, although potentially capable of inducing referrals of business reimbursable under the Federal health care programs, would not be treated as criminal offenses under the anti-kickback statute and would not serve as a basis for administrative sanctions. The OIG safe harbor provisions have been developed ''to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements'' (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement

action under the anti-kickback statute or related administrative authorities.

B. OIG Special Fraud Alerts

The OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices the OIG finds potentially fraudulent or abusive. The Special Fraud Alerts encourage industry compliance by giving providers guidance that can be applied to their own businesses. The OIG Special Fraud Alerts are intended for extensive distribution directly to the health care provider community, as well as those charged with administering the Federal health care programs.

C. Section 205 of Public Law 104–191

Section 205 of Public Law 104–191 requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts.

In developing safe harbors for a criminal statute, the OIG is required to engage in a thorough review of the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover potential opportunities for fraud and abuse. Only then can the OIG determine, in consultation with the Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting the Federal health care programs and their beneficiaries from abusive practices.

II. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of Public Law 104–191, the OIG last published a **Federal Register** solicitation notice for developing new safe harbors and Special Fraud Alerts on December 14, 2000 (65 FR 78124). As required under section 205, a status report of the public comments received in response to that notice is set forth in Appendix F to the OIG's Semiannual Report covering the period April 1, 2001 through September, 30, 2001.[1] The OIG is not seeking additional public comment on the proposals listed in Appendix F at this time. Rather, this notice seeks additional recommendations regarding the development of proposed or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized in Appendix F to the OIG Semiannual Report referenced above.

Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with section 205, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would effect an increase or decrease in—

- Access to health care services;
- The quality of care services;
- Patient freedom of choice among health care providers;
- Competition among health care providers;
- The cost to Federal health care programs;
- The potential overutilization of the health care services; and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will also take into consideration other factors, including, for example, the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may vary based on their decisions whether to (1) order a health care item or service, or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will also consider whether, and to what extent, the practices that would be identified in a new Special Fraud Alert may result in any of the consequences set forth above, as well as the volume and frequency of the conduct that would be identified in the Special Fraud Alerts.

A detailed explanation of justifications for, or empirical data supporting, a suggestion for a safe harbor or Special Fraud Alert would be helpful and should, if possible, be included in any response to this solicitation.

Dated: December 4, 2001.

Janet Rehnquist,

Inspector General.

[FR Doc. 01–31207 Filed 12–18–01; 8:45 am]

BILLING CODE 4152–01–P

[1] The OIG Semiannual Report can be accessed through the OIG Web site at *http://www.dhhs.gov/oig/semann/index.htm.*

Notices

Federal Register
Vol. 66, No. 244
Wednesday, December 19, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. PY–02–001]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Agricultural Marketing Service (AMS) to request an extension for and revision to a currently approved information collection in support of the Regulations Governing the Voluntary Grading of Shell Eggs.

DATES: Comments on this notice must be received by February 19, 2002.

ADDITIONAL INFORMATION: Contact Shields Jones, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0259, Washington, DC 20050–0259, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing the Voluntary Grading of Shell Eggs—7 CFR part 56.

OMB Number: 0581–0128.

Expiration Date of Approval: June 30, 2002.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (60 Stat. 1087–1091, as amended; 7 U.S.C. 1621–1627) (AMA) directs and authorizes the Department of Agriculture (USDA) to develop standards of quality, grades, grading programs, and services which facilitate trading of agricultural products and assure consumers of quality products which are graded and identified under USDA programs.

To provide programs and services, section 203(h) of the AMA directs and authorizes USDA to inspect; certify and identify; and identify the grade, class, quality, quantity, and condition of agricultural products under such rules and regulations as prescribed, including assessment and collection of fees for the cost of the service.

The regulations in 7 CFR part 56 provide a voluntary program for grading shell eggs on the basis of U.S. standards, grades, and weight classes. In addition, the shell egg industry and users of the products have requested that other types of voluntary services be developed and provided under these regulations; e.g., contract and specification acceptance services and certification of quantity. This voluntary grading service is available on a resident basis or on an as-needed basis. A fee for service is paid by the user.

Since this is a voluntary program, respondents need to request or apply for the specific service they wish, and in doing so, they provide information. Since the AMA requires that the cost of service be assessed and collected, information is collected to establish the Agency's cost.

The information collection requirements in this request are essential to carry out the intent of the AMA, to provide the respondents the type of service they request, and to administer the program.

The information collected is used only by authorized representatives of USDA (AMS, Poultry Programs' national staff; regional directors and their staffs; Federal-State supervisors and their staffs; and resident Federal-State graders, which includes State agencies). The information is used to administer and to conduct and carry out the grading services requested by the respondents. The Agency is the primary user of the information. Information is also used by each authorized State agency which has a cooperative agreement with AMS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.242 hours per response.

Respondents: State or local governments, businesses or other for-profits, Federal agencies or employees, small businesses or organizations.

Estimated Number of Respondents: 625.

Estimated Number of Responses per Respondent: 36.32.

Estimated Total Annual Burden on Respondents: 5,520.98 hours.

Copies of this information collection can be obtained from Shields Jones, Standardization Branch, on (202) 720–3506.

Send comments regarding, but not limited to, the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, to: David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 0259, Washington, DC 20250–0259. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for the Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: December 13, 2001.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–31251 Filed 12–18–01; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra County, CA, Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of past meeting.

SUMMARY: The Sierra County Resource Advisory Committee (RAC) met for the

first time on November 26, 2001, in Downieville, California. The purpose of the meeting was to discuss issues relating to implementing the *Secure Rural Schools and Community Self-Determination Act of 2000* (Payments to States) and the expenditure of Title II funds benefiting National Forest System lands on the Humboldt-Toiyabe, Plumas and Tahoe National Forests in Sierra County.

DATES: The meeting was held November 26, 2001 from 3:15 p.m. to 6:15 p.m.

ADDRESSES: The meeting was held at the Downieville Community Hall, Downieville, CA.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, USDA, Tahoe National Forest, 631 Coyote St, Nevada City, CA, 95959, (530) 478–6205, E-mail: *awestling@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items covered included: (1) An Overview of Payments to States Act, Pub. L. 106–393 was provided; (2) Organizational guidelines for the Sierra County RAC were developed by group; (3) Planning processes for projects in Sierra County were discussed; (4) Preliminary project ideas were presented; (7) Public comment was not taken as no members of the public were still in attendance toward the end of the meeting. The meeting was open to the public.

Dated: December 11, 2001.

Steven T. Eubanks,

Forest Supervisor.

[FR Doc. 01–31202 Filed 12–18–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra County, CA, Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Sierra County Resource Advisory Committee (RAC) will meet on January 14, 2002, in Sierraville, California. The purpose of the meeting is to discuss issues relating to implementing the *Secure Rural Schools and Community Self-Determination Act of 2000* (Payments to States) and the expenditure of Title II funds benefiting National Forest System lands on the Humboldt-Toiyabe, Plumas and Tahoe National Forests in Sierra County.

DATES: The meeting will be held January 4, 2002 from 1:30 p.m. to 4:30 p.m. If a storm or other difficulty presents itself, a backup meeting date is scheduled for January 28, 2001, at the same time and location.

ADDRESSES: The meeting will be held at the Sierraville Ranger Station conference room, 317 S. Lincoln (Hwy 89), Sierraville, CA.

FOR FURTHER INFORMATION CONTACT: Ann Westling, Committee Coordinator, USDA, Tahoe National Forest, 631 Coyote St, Nevada City, CA, 95959, (530) 478–6205, e-mail: *awestling@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Welcome and introductions; (2) Review of previous meeting, meeting minutes, and Pub. L. 106–393; (3) Presentation on National Fire Plan and other funding sources; (4) Discussion and decision on criteria for Sierra County RAC projects; (5) Presentation of project ideas; and (6) Preliminary ranking of project ideas. The meeting is open to the public. Public input opportunity will be provided during each agenda item and individuals will have the opportunity to address the Committee at that time.

Dated: December 11, 2001.

Steven T. Eubanks,

Forest Supervisor.

[FR Doc. 01–31203 Filed 12–18–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Withdrawal of the Regional Guide for the Southwestern Region

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The intended effect of this action is to comply with 36 CFR part 219 section 219.35(e) which directs that within 1 year of November 9, 2000, the Regional Forester must withdraw the Regional Guide. When a Regional Guide is withdrawn, the Regional Forester must identify any decisions in the Regional Guide that are to be transferred to a regional supplement of the Forest Service directive system (36 CFR 200.4) or to one or more plans and give notice in the **Federal Register** of these actions.

DATES: This action will be effective November 9, 2001.

FOR FURTHER INFORMATION CONTACT: Arthur Briggs, Director of Planning; Southwestern Region; 333 Broadway SE, Albuquerque, NM. Phone: (505) 842–3292.

SUPPLEMENTARY INFORMATION: This action accomplishes the withdrawal of the Regional Guide for the Southwestern Region. An analysis of the direction contained in the Regional Guide shows that all its applicable direction is either: (1) Already incorporated into Forest Plans, Forest Service directives, statutes or regulations; or (2) contains guidance that does not need to be brought forward as direction to facilitate forest planning. No further action is needed to complete the withdrawal of the Regional Guide for the Southwestern Region.

Dated: December 10, 2001.

James T. Gladen,

Deputy Regional Forester, For Natural Resources.

MANAGEMENT DIRECTION FROM THE REGIONAL GUIDE FOR THE SOUTHWESTERN REGION

Standards/Guidelines From Regional Guide	Addressed in
Watershed Management	
1. Use the watershed condition index to rate ecosystems and watersheds as being in optimum, satisfactory, or unsatisfactory condition.	Forest Plans. Direction is obsolete, and will be updated in revised Forest Plans. Replaced by FSM 2510.42 and 2510.43 (R3 Suppl). Also see FSM 1922.15(20).
2. Manage terrestrial ecosystem and watersheds to maintain satisfactory conditions for the productivity and protection of watersheds. Improve those watersheds where conditions are unsatisfactory.	Forest Plans, and FSM 2522.11.

MANAGEMENT DIRECTION FROM THE REGIONAL GUIDE FOR THE SOUTHWESTERN REGION—Continued

Standards/Guidelines From Regional Guide	Addressed in
3. Design and maintain all water developments that are needed to provide water for National Forest System uses for water use efficiency. When selecting the preferred means of developing or redeveloping a water source for National Forest System use, consider water use efficiency as an analysis criterion. Encourage all users to use water efficiently. Design and maintain National Forest System water developments to minimize water losses. Because of their relative inefficiency, use stockponds only when no other economic means of providing water for livestock and wildlife is available.	Forest Plans, and FSM 2541.04.
4. During the Forest planning process, recognize potential water resource development sites, including sites that are inventoried by State and Federal water resource management agencies.	Forest Plans, and FSM 2535.03 (R3 Suppl).
5. Manage and use the range resource in a manner that maintains or improves watershed to a satisfactory or optimum condition. (Definitions of satisfactory and optimum watershed conditions are in the Glossary of the EIS.)	Forest Plans, and FSM 2211.1 (R3 Suppl).
6. In the Forest planning process, apply the following prescriptions for each watershed condition class: (a) Optimum—maintain these conditions. (b) Satisfactory—improve where cost effective. (c) Unsatisfactory—emphasize improvement.	Forest Plans. Direction is obsolete, and will be updated in revised Forest Plans. Replaced by FSM 2510.42 and 2510.43 (R3 Suppl).
7. Assign no forage capacity to areas in unsatisfactory watershed condition where reforestation measures are not cost effective. Through management, restrict livestock use in these areas.	FSM 2211.1 (R3 Suppl).
8. Improve all terrestrial ecosystems and watersheds to satisfactory or better condition by 2020.	FSM 2522.02 (R3 Suppl).
9. Complete watershed restoration action plans by 1990 to improve all unsatisfactory terrestrial ecosystems and watersheds. (These action plans cover all activities and uses and are supplemental to the Forest Plans).	FSM 2510.43 (R3 Suppl), and FSM 2532.4 (R3 Suppl).
10. Integrate soil and water conservation measures with management activities to ensure maintenance and improvement of watershed conditions. Temporary variances for apparent unsatisfactory watershed condition ratings will be given if soil and water conservation measures are successfully implemented.	Forest Plans, using Best Mgt Practices, in FSH 2509.22 (R3 Suppl), and FSM 2530.44 (R3 Suppl) and FSM 2532.03 (R3 Suppl).
11. After the second growing season following a wildfire, evaluate changes in watershed condition.	Forest Plans.
12. Maintain viable populations of all existing native and desired nonnative vertebrate species in the planning area. Provide a diversity of plant and animal communities to meet multiple-use objectives.	Forest Plans, and 36 CFR 219.19 and 219.27(g), FSM 2634, FSM 2670.12.
13. When compatible with multiple-use objectives and when cost effective, schedule water yield improvement projects in State-identified basins where recoverable increases exceed 0.5 inch per year. Consider water yield designs in all management prescriptions. Emphasize water yield increases in multiple-use prescriptions for chaparral.	FSM 2522.12 (R3 Suppl).
Fuelwood Management	
1. Permits will be required for all fuelwood on all Forests by July 1, 1983.	36 CFR 223.5–223.13, and some Forest Plans.
2. Free fuelwood will be available only under the following circumstances: (a) Dead and down timber—when supply exceeds demand, access is limited or difficult, or special environmental, or economic considerations preclude effective management under the charge permit system (b) Live timber—when sufficient amounts of dead and down material are not available and there is a need to meet multiple-use objectives, such as harvesting green trees to improve the growth rate of residual trees or for insect and disease control	36 CFR 223.5–223.13, and some Forest Plans.
3. Stumpage charges will be assessed in all circumstances not covered in 2 above. A minimum charge of $10.00 per permit will be collected. The rates per unit will be based on a Regional minimum price, standard rates, developed by Forests, and appraised rates (in the case of offered sales), or joint policies established with the Bureau of Land Management. (The above direction does not apply to the use of small quantities of fuelwood used onsite according to 36 CFR 223.1(e)(3), such as when camping on the Forest.)	FSM 2431.
4. Coordinate uniform sales policies among the Forest Service, States, other Federal agencies, and private landowners to increase the availability and supply of fuelwood.	Forest Plans. Also, in 36 219.7, 219.14, 219.16, & 221.3, and FSM 2460, and FSH 2409.13(42).
5. Manage unsuitable lands to emphasize resource variety based on potential natural vegetation. Modify pinyon-juniper overstory to meet multiple-use objectives for the site consistent with Forest Plans.	
6. Previously cleared land areas will be managed to achieve multiple-use objectives, including increased fuelwood supplies.	
7. Emphasize fuelwood as a resource in the management of unsuitable lands. Initiate periodic fuelwood inventories on both suitable and unsuitable lands to determine potential source and availability. Estimate sustained harvest levels, track inventory reduction, and establish control procedures to maintain a sustained yield.	
8. Where the potential natural vegetation is pinyon-juniper, management priority will be fuelwood production and wildlife habitat. Snag policy (FSM 5151.13, R–3 Supplement 123–7/77) applies in the woodland type. The purpose is to provide adequate habitat to maintain self-sustaining populations of snag-dependent wildlife species on forested lands, including the woodland type. In areas where demand for fuelwood is light and is expected to continue to be so, modification of pinyon-juniper overstory may be justified. Personal or commercial harvest of fuelwood will be considered in all overstory modification projects.	Forest Plans—management area direction for woodland areas. Snag policy in Forest Plans and FSH 2409.

MANAGEMENT DIRECTION FROM THE REGIONAL GUIDE FOR THE SOUTHWESTERN REGION—Continued

Standards/Guidelines From Regional Guide	Addressed in
Transportation Systems and Travel Management	
1. Accomplish transportation planning, management, development, and maintenance to meet targets and user needs, while minimizing environmental degradation and road densities. Transportation management and planning includes all modes of access.	FSH 7709.55, FSM 1920.15(17).
2. Recognize and evaluate the tangible and intangible benefits and costs of each project to ensure that the objectives of management are fulfilled with minimum adverse effects on the human environment, and in the most cost-effective manner.	Forest Plans and FSM 7731.02, 7731.03.
3. Coordinate transportation facilities according to the following guidelines: (a) Develop and evaluate transportation facility construction and maintenance alternatives and select an alternative that meets management objectives with the least adverse effect on the human environment, and at the least cost. (b) Apply all resource coordination for the protection of National Forest System lands, resources, and ecosystems to the planning, development, and operation of transportation facilities by private parties under permit or easement, or Federal, State and local governments under Memorandums of Understanding. (c) Provide access in a manner consistent with management objectives and environmental policies and standards. (d) Protect threatened and endangered species in planning, development, and operation of transportation facilities (FSM 2601.1). (e) Apply standards for transportation network analysis, as described in Regional supplements 2, 8, and 10 to Chapter 7709.11 of the Forest Service Handbook, to Forest Plans. Forests will integrate transportation planning with land management planning. (f) Protect archaeological sites in planning, development, and operation of transportation facilities. (g) Provide reasonable user safety through design, maintenance, and operation. All new and reconstructed facilities will conform to the Highway Safety Act.	Forest Plan—Transportation Plans, + Forest Plan goals, + FSH 7709.55, and 36 CFR 212.4, also addressed by: Item (b) FSM 2732.6; Item (c) 36 CFR 212.6; FSH 7731.02; Item (d) FSM 2601.1; Item (e) FSH 7709.11; Item (f) Forest Plan standards, 36 CFR 219.24; Item (g) FSH 7709.58, 7709.59, and Highway Safety Act.
4. Emphasize long-run needs and demands.	Forest Plans, 36 CFR 212, and FSH 7709.
5. Allow motorized travel on all National Forest System roads and trails, except where specifically closed or regulated by order. All roads or trails open to motorized travel shall be identified by a route number or assurance arrow. New road construction will be minimized. Certain system roads may be closed during periods of planned activity to reduce maintenance liabilities, minimize conflicts of use, and contribute toward user safety. Local system roads, where needed to accommodate fuelwood gathering, will remain open as long as this purpose can be served.	Forest Plan—Transportation Plans, FSM 2353.04 (R3 Suppl), FSH 7709.59 (25), 36 CFR 212.5, and some Forest Plan standards.
6. Forest Plans shall, by applying planning criteria in FSM 2355, delineate management areas that are open, restricted, and closed to cross-country motorized travel.	Forest Plan Transportation Plans and maps, FSM 2353.04 (R3 Suppl), 36 CFR 212.5 and 219.21(g), FSH 7709.55 (34), and some Forest Plan standards.
7. Motorized travel may not depart from Forest roads and trails and proceed cross-country in those management areas closed or restricted to such use, except as authorized by special permit.	
8. Post closed or restricted areas at entrances to these areas, and visibly mark open system roads and trails within the area with a route number of assurance arrow.	FSH 7709.59 (25), 7731.04b, FSM 2353.04 (R3 Suppl).
9. Permit unrestricted cross-country travel in management areas that the Forest Plan shows as open.	Forest Plan Transportation Plans and maps, FSH 7709.55 (34).
10. Regardless of the signing technique chosen, favor humanistic, positive signing techniques over regulatory, negative directions. Emphasis will be placed on giving users information about where their particular activity may be pursued instead of where they are restricted or prohibited.	FSH 7709.55 (30).
11. Eliminate an estimated 10,000 miles of existing unneeded primitive roads by the year 2030.	Forest Plans.
12. Protect wetland and floodplain values and identify hazards in accordance with Executive Orders 11990 and 11988 (see also FSM 2527 and FSM 2528). Avoid the development of transportation facilities or protect existing facilities in wetlands or areas subject to inundation by 100-year floods (1 percent chance of occurring in any year). Remove existing facilities from riparian areas where impacts are unacceptable.	Forest Plans, FSM and Exec Orders., and 36 CFR 219.27(a)(4).
Riparian Area Management	
1. Manage riparian areas in accordance with legal requirements regarding floodplains, wetlands, wild and scenic rivers, and cultural and other resources. Recognize the importance and distinct values of riparian areas in Forest Plans.	Forest Plans, + numerous statutes & regulations.
2. Manage riparian areas to protect the productivity and diversity of riparian-dependent resources by requiring actions within or affecting riparian areas to protect and, where applicable, improve dependent resources (FSM 2526). Emphasize protection of soil, water, vegetation, and wildlife and fish resources prior to implementing projects (FSM 2526).	Forest Plans, FSM 2526, and 36 CFR 219.27e; FSM 2526.
3. Give preferential consideration to resources dependent on riparian areas over other resources. Other resources uses and activities may occur to the extent that they support or do not adversely affect riparian-dependent resources.	In some Forest Plans, and FSM 2526.
4. By 1990, complete classifications and inventories of all riparian areas, and complete action plans to improve all unsatisfactory riparian areas. Improve all riparian areas to satisfactory or better condition by 2030. Such satisfactory conditions are specified below, expressed as percentage of ''natural'' conditions (that is, what each site can produce if not further disturbed by man). Twenty-five percent of all riparian areas must be in satisfactory condition by 2000.	FSM 2526.05, 2526.1, and 2605 (R3 Suppl). Also in some Forest Plans. Items (a) and (b) are obsolete, and will be updated in Forest Plan revisions.

MANAGEMENT DIRECTION FROM THE REGIONAL GUIDE FOR THE SOUTHWESTERN REGION—Continued

Standards/Guidelines From Regional Guide	Addressed in
(a) Aquatic resource: (1) Maintain at least 80 percent of natural shade over water surfaces. (2) Maintain at least 80 percent of natural bank protection. (3) Maintain the composition of sand, silt, and clay within 20 percent of natural levels. (b) Vegetation resource (where the site is capable of supporting woody plants): (1) Maintain at least 60 percent of the woody plant composition in three or more riparian species. (2) Maintain at least three age classes of riparian woody plants, with at least 10 percent of the woody plant cover in sprouts, seedlings, and saplings of riparian species. (3) Maintain at least 60 percent of natural shrub and tree crown cover. (c) Wildlife resources: Maintain at least 60 percent of natural shade over land surfaces.	
5. On a site-specific basis, identify riparian-dependent resources and develop action plans and programs to bring about conditions essential to supporting those dependent resources.	FSM 2526.05, 2526.1, and 2605 (R3 Suppl).
Research Natural Areas	
1. Identify, study, and designate sufficient areas to meet the representation requirements for terrestrial ecosystems in the Southwest by 1985. (See Table 3–1). Strengthen the representation of New Mexico ecosystems in the research natural area system.	Forest Plans, and FSM 4063.
2. The size of a research natural area will normally not be less than 300 acres and not be greater than 1,200 acres. Establish smaller areas to protect special ecosystems and smaller or larger areas to ensure logical boundaries.	FSM 4063.1.
3. Establish areas on National Forest System lands that include appropriate opportunities in wilderness. Emphasize establishment of areas where resources use is restricted by other designations, such as municipal watersheds and the Langmuir Research Area. Review new land acquisitions and lands released from other Federal agencies for research natural area designation. Examples are the Los Alamos Restricted Area and the Manzano Base Security Area in New Mexico.	Forest Plans (mgt area designations), and 36 CFR 219.18, 219.25.
4. Research natural areas on National Forest System lands of the Southwestern Region will be recognized, screened, and established in the following order of priority (listed in descending order). (a) Priority will be given to candidate research natural areas where ecosystem representations: (1) Include typical, extensive, and important flora or fauna. (2) Exhibit modal (typical representative) features of biota, soils, climate commonly found on National Forest System lands. (3) Include biotic populations of special interest or concern. (4) Exist in mosaics that represent more than one ecological component of a research natural area. (5) Have an apparent level of scientific interest or management importance use of even-aged management where perpetuation of this species is desired. (6) Have a low degree of potential conflict with other uses, and are located where protection and access can be readily provided.	Forest Plans—RNAs, FSM 4063.2, and 36 CFR 219.25.
Table 3–1 Representation Needs for Research Natural Areas in the Southwestern Region (includes Biotic Community Classification, Forest Cover Types and/or Potential Natural Vegetation, Terrestrial Ecosystem Classification, Comments and Possible Sites).	Table is no longer needed. Representation needs for R3 were met. RNAs may be changed through Forest Plan amendment or revision.
Harvest Cutting Methods by Forest Type	
Harvest cutting methods are defined in the NFMA regulations and described in Appendix D of the EIS. Both even-aged and uneven-aged harvest cutting methods are appropriate for use in the Southwestern Region. Even-aged management, with its many variations of cutting methods, is the most appropriate for managing the suitable lands where timber production is a primary objective. Uneven-aged management is most appropriate for use in certain special management areas where timber production is subordinate to other resource management objectives. In all cases, the harvest cutting method applied will be selected to best fit the particular abiotic, biotic, economic, and management objectives that apply to that stand. These objectives, as well as the areas where there systems will be used, will be identified in Forest Plans.	FSH 2409.17—Silv Practices Handbook, Cutting Methods Guide for R3 (currently being updated). Direction is outdated. Some Forest Plans include harvest method guidelines; will be updated in revisions. Also see FSM 1922.15(3).
Table 3–2 displays the appropriate silvicultural system and cutting methods to be used for each forest type. (See also Appendix D of the EIS.) However, these guidelines do not preclude the modification of silvicultural systems when applied to special areas or situations. Modifications may be determined on a case-by-case basis in Forest Plans according to the following criteria: 1. The system must develop conditions required to meet resource management objectives. 2. The system must permit control of competing vegetation sufficient to allow establishment of desirable reproduction. 3. The system must promote stand structures, composition, and conditions that minimize damage from pest organisms, animals, wind, and fire. 4. The system must be compatible with acceptable logging methods so that future stands can be cultured and harvested.	FSH 2409.17, which is currently being revised.
Table 3–2 Silvicultural Systems and Cutting Methods by Forest Type, and ''principal cutting methods'' (even-age harvest methods) recommended for aspen, mixed conifer, ponderosa pine, and spruce-fir; mix of even- and uneven age methods recommended for woodlands.	Outdated. Will be replaced in revised FSH 2409.17, and revised Forest Plans.

MANAGEMENT DIRECTION FROM THE REGIONAL GUIDE FOR THE SOUTHWESTERN REGION—Continued

Standards/Guidelines From Regional Guide	Addressed in
Maximum Size, Dispersal, Size Variation, and Duration of Created Openings	
A natural opening is an area with less than 10 percent crown cover that has never supported a higher tree density—for example, a meadow, rock slide, or swamp. A created opening is a contiguous area greater than two acres in size that was created by vegetative manipulation and that does not meet tree height and stocking requirements. When an opening results from a natural occurrence, such as wildfire or windstorm, the opening will be treated as a created opening.	Referenced in Forest Plans and FSH 2409.17—Silvicultural Practices Handbook. Outdated, and is currently being revised. Will also be addressed in Forest Plan revisions.
1. A created opening will no longer be considered an opening when the conditions in Table 3–3 are met.	
2. Clearcuts may not be larger than 40 acres without Regional Forester approval. The standards shown in Table 3–4 also apply, except in the following situations: (a) In the harvest of salvageable wood in areas subjected to catastrophic conditions, such as fire, insect and disease attack, or windstorm. (b) In the harvest of dwarf-mistletoe-infested overstory trees that threaten the established regeneration. A biological evaluation of Regional forest pest management experts is required.	Referenced in Forest Plans and FSH 2409.17—Silvicultural Practices Handbook. Outdated, currently being revised. Will also be addressed in Forest Plan revisions.
3. For nontimber species, such as the pinyon-juniper and chaparral types, standards and guidelines are established for the maximum size, dispersal, and duration of created openings. These standards and guidelines are designed to address concerns for wildlife and plant species. (a) In the woodland type, created openings in areas that have been identified as historic big-game winter range will be designed so that an animal will be no more than 600 feet from hiding cover at any location within the opening (25). (b) Limitations in Tables 3–3 and 3–4 apply to newly created openings in the pinyon-juniper type. Improve the interspersion of vegetated areas in existing openings. (c) Limitations in Tables 3–3 and 3–4 apply to permanent openings in the chaparral type. A permanent opening is an area that is maintained with no more than 50 percent of the potential natural crown cover. Fuelbreaks are excepted because they are less than 330 feet wide. (d) An area is no longer considered an opening in the pinyon-juniper type if one of the following conditions is met: (1) There are at least 35 trees per acre that are 10 feet or taller. (2) There are at least 80 trees per acre that are 6 feet or taller. (e) The minimum distance between openings is 660 feet.	Referenced in Forest Plans and FSH 2409.17—Silvicultural Practices Handbook. Outdated, currently being revised. Will be addressed in Forest plan revisions.
Table 3–3 When an Area Would No Longer Be Classified as an Opening. Table 3–4 Limitations on Created Openings (based on forest type and slope).	Referenced in Forest Plans and FSH 2409.17—Silvicultural Practices Handbook. Outdated, currently being revised. Will be addressed in Forest Plan revisions. Also in 36 CFR 219.27(d).
Management Intensity and Utilization Standards	
Intensity: Intensity may vary depending on the management objectives, the tree species involved, site productivity, market supply or demand, and available funding. The following timber management practices may be used in the Region and will have an influence on both the total number of stand entries, frequency of stand entries, and the culmination of mean annual increment of growth: 1. Site preparation—chemical, mechanical, or burning. 2. Genetic improvement of tree stock (genetics). 3. Reforestation by planting, seeding, or natural means. 4. Protection of growing stock from animals, insects, diseases, and wildlife. 5. Release by the use of chemicals or mechanical methods. 6. Precommercial thinning. 7. Commercial thinning. 8. Salvage. 9. Regeneration harvest. The number of entries into a stand depends on the species type and site quality, as well as on the volume needed to make an entry economically feasible.	FSH 2409.17, chapters 6 and 8, and 36 CFR 219.15.
Utilization: Utilization standards shown in Table 3–5 will be used in determining harvest levels. Table 3–5 Utilization Standards for the Determination of Harvest Levels.	FSH 2409.12, chap. 10 (R3 Suppl); also in some Forest Plans.
Corridors	
1. All corridors will provide for joint use (FSM 2778, FLPMA). Corridors include all linear rights-of-way, except those highways covered under the National Forest Roads and Trails Act of October 1964.	FSM 2778, and FLPMA. Also see FSM 1920.15(19).
2. Corridor designation will be addressed in Forest Plans. Joint use of corridors will be determined on a case-by-case basis contingent upon individual use and these compatibility guidelines. Requests for corridors not in the Regional Guide or in Forest Plans will be evaluated using the environmental analysis process.	Forest Plans—Utility Corridor Plans and maps; FSH 7709.55(11.3); and FSH 1909.15.

MANAGEMENT DIRECTION FROM THE REGIONAL GUIDE FOR THE SOUTHWESTERN REGION—Continued

Standards/Guidelines From Regional Guide	Addressed in
3. The following alternatives will be evaluated prior to designation of new corridors: (a) Use existing rights-of-way (retaining currently authorized width), but upgrade capacity. For example, upgrade 230 kV transmission line to 345 kV or replace a 10-inch pipeline with a 12-inch pipeline. (b) Expand the existing rights-of-way limits to include additional facilities where compatible. For example, authorized a pipeline right-of-way adjacent to an existing highway or railroad right-of-way.	Forest Plans—Utility Corridor Plans and maps; FSH 7709.55(11.3).
4. Guidelines for Joint Use of Corridors will be developed at a later date. Summarized guidance may be adopted from a study done by the Aerospace Corporation for the Bureau of Land Management. (a) Table 3–6, entitled ''System Interactions in Joint Use of Rights-of-Way,'' contains factors that influence the joint use of corridors and is offered as a guide that should be considered when evaluating such proposals. (b) The standard right-of-way width requirements listed in Table 3–7 are average widths that may apply nationwide. In actual practice, rights-of-way must be tailored to allow for flexibility and reliability as dictated by the topography. The feasibility of joint use of corridors will be dictated frequently by the physical environment through which the right-of-way passes. (c) The following evaluation criteria will be used to determine if right-of-way proposals can be accommodated through the joint use of designated corridors. (1) Technical compatibility with other utility or transportation uses already existing in a corridor (2) System reliability, considering safety, natural disasters or catastrophic events, national security. (3) Economics, including alternative routes, mitigation costs. (4) Physical capability of the land, such as width of a mountain pass; (5) Compatibility with adjacent land uses, such as prime or unique farmlands, recreation areas, classified wilderness, mineral development or exploration areas, prime timber-producing lands, or known geothermal resources areas. (6) Landownership, including impact on other landowners. (7) State and local land-use plans and policies. (8) Environmental sensitivity.	Direction in FSH 7709.55 (11.3) that guide utility corridor planning, along with Forest Plan direction, is an adequate substitute for this Reg. Guide direction. Also, FSH 1909.15 (NEPA) will cover evaluation criteria regarding ROW proposals (item c, 1–8). Also see FSM 2730—special uses roads and easements; and FSM 2732.42—MOUs for State Hwys on NFS lands.
5. New corridor designation will be pursued only after critical windows and avoidance areas are identified. A window is a confined area of land through which a right-of-way could pass.	
Windows will be identified on proposed corridors when: (a) Users express a need for rights-of-way in a constrained area. (b) A systems analysis indicates a proposed location is needed through a constrained (restricted) area.	Forest Plans identified critical windows and avoidance areas. New corridor designations will be guided by FSH 7709.55, 1909.15, and 1920.
A window will be considered to be present where: (a) Constraints on Federal lands occur near proposed rights-of-way. (b) Land uses and values adjacent to proposed rights-of-way prevent the establishment of the right-of-way. (c) Any blocks or tracts of public land are proposed corridors between source and market. (d) Blocks or tracts of Federal lands are in alignment with other windows, avoidance areas, or existing corridors.	
Table 3–6 Systems Interactions in Joint Use of Rights-of-Way (Source: USDI Bureau of Land Management. 1975. The Need for a National System of Transportation and Utility Corridors. Page IV–22)	This table is unnecessary. FSH 2709.12 provides adequate direction for forest planning purposes.
Table 3–7 Right-of-Way Width Requirements (Feet). Source—Aerospace Corporation, 1975.	This table is unnecessary. FSH 2709.12 provides adequate direction for forest planning purposes.
Technical Compatibility Factors for Joint-Use of Rights-of-Way.	
Federal Railroad Right-of-Way Act of 1875 set right-of-way width at 200 feet.	
Industry practice is normally to retain entire construction right-of-way width on non-Federal lands.	
Avoidance areas—land areas that have particular land uses or environmental characteristics that would be difficult or impossible to mitigate—include the following: (a) Areas where establishment and use of corridors will conflict with land-use/land management objectives. Examples: Specially managed areas, environmentally sensitive areas, archaeological and historical sites, visually sensitive areas, active coal mining units, high site timber lands when low site lands are available. (b) Areas that through the NEPA scoping process have been identified by Federal agencies or by local governmental bodies (within their areas of jurisdiction) as not suitable for the placement of linear facilities. Identification of such areas will influence the location of corridor entry and exit points on National Forest System lands. Examples: Urban-suburban residential areas, parks and recreation areas, prime forest or agricultural areas.	Forest Plans classified avoidance areas. Future planning for corridors will follow guidance in FSH 7709.55, 1909.15 and 1920.
6. A transportation-utility corridor can be designated in the following ways: (a) Pending approval of a Forest Plan, delineation in a special-use permit. Designation by this means will be incorporated into the Forest Plan as required by section 6(i) of NFMA. (b) Approval of a Forest Plan, or revision or amendment thereof, that assigns lands to a linear corridor, including designation of windows and existing corridors.	FSH 7709.55 (11) and FSM 2731.42 (R3 Suppl)

MANAGEMENT DIRECTION FROM THE REGIONAL GUIDE FOR THE SOUTHWESTERN REGION—Continued

Standards/Guidelines From Regional Guide	Addressed in
(c) Approval, without further review, of any existing corridor that includes or is capable of accommodating additional compatible rights-of-way. This form of designation will occur only in extraordinary circumstances. Normally, designations will be made as in 6(b), above.	
Public notice of a corridor designation made in the Forest Plan (item 6(b), above) will be given through publication and circulation of the Forest Plan, its Environmental Impact Statement, and the associated Record of Decision. Public notice of designations made as in items 6(a) and 6(c), above, will be given through publication in local newspapers or the circulation of a Decision Notice on an Environmental Assessment.	Completed in development of Forest Plans. Future planning for corridors will follow guidance in FSH 7709.55, 1909.15 and 1920.
Air-Quality Management	
1. Forest Plans will provide direction for the planning and management of air-pollution-generating activities on National Forest System lands so that air quality will be equal to or better than that required by the applicable Federal, State, and local standards or regulations.	Forest Plans, FSM 2580, 2580.43, and FSM 5130 and 5150 (smoke)
2. Forest Plans will identify air-quality-related values, including visibility, for all National Forest System Class I areas, as defined by the Clean Air Act. Forest Plans will not identify integral vistas, but will identify existing visibility impairment in National Forest System Class I areas.	Forest Plans (and FEISs), and FSM 2580.3, 2580.5 Exhibit 01–AQRVs in R3 Class I wilderness, and 2580.5 Exhibit 02–R3 Airsheds
3. Forest Plans will document baseline quantities of total suspended particulates from wildfires and prescribed fires on National Forest System land. Estimates of quantities that will result from Forest Plan alternatives will be calculated.	This data is not yet available. Air quality monitors are currently being established. Direction in FSM 2580 is adequate to guide planning in meeting applicable air quality laws and regulations.
4. The Regional Office Director of Aviation and Fire Management is the primary Forest Service contact with the State air-quality control agencies to provide interagency coordination.	Not applicable; not a standard or guideline. Covered in FSM 2580.43 (R3 Suppl).
Minerals	
Locatable Minerals: Forest Service regulations (36 CFR 228) apply to locatable mineral operations conducted under the authority of the General Mining Law. These regulations seek to minimize surface resource disturbance without infringing on rights granted by law. A plan of operation is required from anyone proposing operations that might cause significant surface resource disturbance. The operating plan must contain information about the type of operation, how it is to be conducted, the route and means of access, measures for environmental protection, and reclamation. The plan of operation is required to comply with applicable Federal and State provisions for maintenance of air quality, water quality, and solid waste disposal. Scenic values, fisheries, and wildlife habitat are to be given such protection as is practicable. Road construction and maintenance are designed to minimize and prevent, if practicable, damage to soil, water, and other values.	36 CFR 228, subpart A, including 228.4 and .5-plan of operations requirements. Also covered in FSM 2810 and 2802, 2803.
Approval of the plan is required before operations commence. A bond to ensure reclamation may be required as a condition of approval. In analysis of the plan, economics of the operation are considered in determining the reasonableness of the provisions for surface resource protection. Approval indicates that the operation, conducted according to the plan, will minimize surface resource disturbance. Approval may be withheld or delayed only for limited reasons specified in the regulations. A plan that describes an operation conducted in a reasonable and necessary manner is entitled to approval, even through surface resource damage may result. Approval of a plan does not signify consent to operate. Consent is granted by law.	36 CFR 228, subpart A, including 228.4 and .5-plan of operations requirements, and 228.13-bond reqts. Also covered in FSM 2810, and 2802, 2803.
The Forest Service regulations (36 CFR 228) also apply to wilderness. Although prospecting and mining are authorized in these areas, they must be conducted as compatibly with the preservation of wilderness character as is practicable. The regulations are applied more strictly in wilderness than on other lands.	36 CFR 228.15.
Salable Minerals: When need for salable mineral materials is indicated by government and/or private application, an environmental analysis will be conducted. If it is determined from this analysis that the site should be operated, appropriate conditions of operation are specified. Mineral materials are free for Federal, State, and local government units for use in road building. Competitive or negotiated sale is appropriate for personal and commercial use. The Wilderness Act of 1964 does not prohibit mineral material sales, but policy, expressed in regulations (36 CFR 293.14(c)), does.	36 CFR 228, Subpart C, and FSM 2850, and FSH 1909.15 and 1920.
Leasable Minerals: National Forest System land is available for mineral exploration, development, and production unless withdrawn from operation of the leasing laws, or unless withdrawal can be demonstrated as appropriate. Proposals for leases under the various leasing laws are considered in a speedy, simple process that does not sacrifice protection of surface resources. The process emphasizes the use of existing controls, minimizes special stipulations, and standardizes the wording of those special stipulations commonly needed. It also recognizes that a lease does not authorize surface-disturbing activity, but that operations are subject to an additional permit, issuance of which is preceded by an environmental analysis.	Forest Plans, +36 CFR 228, Subpart B, and Subpart E on oil and gas leasing. FSM 2820. Also see 36 CFR 219.22.

MANAGEMENT DIRECTION FROM THE REGIONAL GUIDE FOR THE SOUTHWESTERN REGION—Continued

Standards/Guidelines From Regional Guide	Addressed in
1. During the Forest planning process, land will be categorized for consideration of proposals for prospecting permits or leases under the various mineral leasing laws. Where applicable, management prescriptions will identify the following mineral leasing categories of an area for leasing and the operating constraints necessary to manage and protect surface resources: (1) Unavailable, (2) standard, (3) special, and (4) reserved. (See Appendix A for definitions of categories.) In a programmatic environmental analysis completed March 18, 1981, it was shown that little or no effect normally would result from a lease issued in areas in the standard category and all subcategories of the special category, except wilderness, wilderness study areas designated by Congress, and Administration-endorsed wilderness proposals, which are a special group within the limited surface use subcategory.	Forest Plans. 36 CFR 219.22, and 36 CFR 228.
2. For oil and gas leasing, the following special stipulation forms will be used in appropriate circumstances as supplements to the Bureau of Land Management Form 3109–3 (Stipulation for Lands Under the Jurisdiction of the Department of Agriculture): Endangered Species, Cultural and Paleontological Resources; Limited Surface Use; Further Planning; Wild and Scenic River Study; and Painting (See Appendix A).	FSM 2822.41, and 36 CFR 228 Subpart E.
3. For geothermal leasing, fewer and different special stipulations are needed than for oil and gas because the base lease, regulations, and Operational Orders give more comprehensive protection. Standard special stipulations are being developed for geothermal leases that will be used nationwide.	FSM 2170 (energy mgt).
4. Approval of the Regional Forester and Bureau of Land Management is required for inclusion of additional oil and gas or geothermal stipulations.	FSM 2822 and 2170; 36 FR 228.101, 102.
5. Prospecting for and production of other (solid) leasable minerals involves highly varied operations, and in recognition of this, conditions in base leases and regulations are less specific than those for oil and gas or for geothermal leases. There are no operating instructions. The special stipulations applicable to oil and gas will be used in appropriate circumstances; any needed additional ones require Regional Forester and Bureau of Land Management approval.	36 CFR 228, Subparts B and E. FSM 2820. Also see 36 CFR 219.22, and 36 CFR 228.108—surface use requirements.
6. Changes in base lease, regulations, and operating instructions, and development of nationwide special stipulations may require accommodating changes in wording and use of those herein.	This is a statement, not a standard.
7. Wilderness areas, wilderness study areas designated by Congress, and RARE II wilderness recommendations are in a subcategory of the special category, for which an environmental assessment or environmental impact statement is mandated. The report to the Bureau of Land Management is derived from this document. In circumstances defined by the Chief of the Forest Service, the contingent right stipulation may be used in addressing leasing proposals as an alternative to the above. (See Appendix A.)	36 CFR 228.15—operations in Wilderness; and FSH 1909.15.
Goals for the Southwestern Region	
1. Provide for the preservation of scenic beauty and the opportunity to enjoy it. 2. Provide a moderate increase in water yield, while maintaining water quality. 3. Provide high-quality wilderness in the Southwestern ecosystems and the opportunity to enjoy them. 4. Provide recreation opportunities in a natural setting. 5. Provide productive habitat for a diverse population of wildlife and fish species. 6. Provide for the sustained moderate production of timber and forage. 7. Recognize local traditional values and take opportunities to emphasize community stability and job opportunities through management programs, especially in areas where local people rely on the land for a social and economic base. 8. Provide opportunities for mineral development with emphasis on energy-related resources. 9. Encourage the protection and management of non-Federal range, forest, and watershed lands by providing assistance and research information to landowners through State agencies. 10. Strive for optimally effective public and employee health and safety programs. 11. Seek viewpoints and assistance in developing these health and safety programs and keep the public informed about Forest Service activities. 12. Provide an opportunity for human resource development through employment programs. 13. Stimulate, cooperate in, and implement relevant research. 14. Develop, motivate, and maintain an effective organization to support and accomplish all Regional programs, while providing equal employment opportunities, challenging career ladders, and the full use of all available employee skills.	These goals are already contained in Forest Plans, along with statutes, regulations and Forest Service directives.

[FR Doc. 01–31200 Filed 12–18–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 19, 2001.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2001), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 2002.

	Period to be Reviewed
Antidumping Duty Proceedings	
Republic of Korea: Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/00—10/31/01
Shinho Steel Co.	
Mexico: Circular Welded Non-alloy Steel Pipe, A–201–805	11/1/00—10/31/01
Hysla, S.A. de C.V.	
The People's Republic of China: Fresh Garlic,* A–570–831	11/1/00—10/31/01
Asia Pacific Express Company, Ltd.	
CIF Transportation (HK) Company, Ltd.	
Clipper Manufacturing Ltd.	
Fook Huat Tong Kee Pte., Ltd./Taian Fook Huat Tong Kee Foods Co.	
Foshan Foodstuffs Import & Export Company	
Jinan Import & Export Corporation	
Jinxiang Foreign Trade Corporation	
Jinxiang Hong Chong Fruits & Vegetable Products Company, Ltd.	
Qingdao Rui Sheng Food Company, Ltd.	
Rich Shipping Company, Ltd.	
Rizhao Hanxi Fisheries & Comprehensive Development Co., Ltd.	
Shandong Commercial Group Corporation	
Top Pearl Ltd.	
Wo Hing (H.K.) Trading Co.	
Zen Continental Company, Inc.	
Zhejiang Materials Industry International Co., Ltd.	
Golden Light Trading Company, Ltd.	
Good Fate International	
Phil-Sino International Trading Inc.	
United Shipping Agency Company, Ltd.	
* If one of the above named companies does not qualify for a separate rate, all other exporters of fresh garlic from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
Ukraine: Certain Cut-to-Length Carbon Steel Plate, A–823–808	11/1/00—10/31/01

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: December 13, 2001.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 01–31257 Filed 12–18–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–805]

Extruded Rubber Thread From Malaysia: Notice of Extension of Time Limits for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limits of the final results of the antidumping duty administrative review on extruded rubber thread from Malaysia. The review covers three producers/exporters of the subject merchandise to the United

States. The period of review is October 1, 1999, through September 30, 2000.

EFFECTIVE DATE: December 19, 2001.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–0656 or (202) 482–3874, respectively.

Postponement of Final Results of Administrative Review: The Department published the preliminary results of the 1999–2000 administrative review of the antidumping duty order on extruded rubber thread from Malaysia on November 6, 2001 (66 FR 56057). The current deadline for the final results in this review is March 6, 2002. We must conduct sales and cost verifications of the information provided by the respondents. Due to scheduling problems with one of the companies participating in this review, we are unable to complete verification before March 2002. Because we need additional time for verification, we have extended the deadline until May 6, 2002.

This extension is in accordance with section 751(a)(3)(A) of Tariff Act of 1930, as amended by the Uruguay Round Agreements Act, and 19 CFR 351.213(h)(2).

Dated: December 12, 2001.

Louis Apple,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–31256 Filed 12–18–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Connecticut, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes: *Correction*

In notice document 01–30170, appearing on page 63218 in the issue of Wednesday, December 5, 2001, make the following correction:

On page 63218, in the third column, first full paragraph, ''Order Date: December 8, 2001.'' should read ''Order Date: December 8, 2000.''

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 01–31258 Filed 12–18–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110701B]

Marine Mammals; Notice of Intent to Prepare an Environmental Assessment for Issuing a Bowhead Whale Subsistence Quota to the Alaska Eskimo Whaling Commission (AEWC) for the years 2003 through 2007

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an Environmental Assessment (EA); request for written comments.

SUMMARY: NMFS announces its intention to prepare an EA, in accordance with the National Environmental Policy Act, to assess the impacts of issuing a subsistence quota for bowhead whales to the AEWC for the years 2003 through 2007. NMFS solicits comments and information to facilitate this analysis.

DATES: Comments and information must be postmarked by January 31, 2002.

ADDRESSES: Written comments should be sent to Chief, Marine Mammal Division (F/PR2), Office of Protected Resources, National Marine Fisheries Service, 13th Floor, 1315 East-West Hwy, Silver Spring, MD 20910. Please mark the outside of the envelope with ''Comments on Bowhead Whale Analysis.'' Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Emily Hanson Menashes, NMFS Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION: At its 1997 annual meeting, the International Whaling Commission (IWC) approved a 5-year quota for the aboriginal take of the Western arctic stock of bowhead whales. The quota allows for a combined total of up to 280 whales to be landed in the years 1998 through 2002 by Alaskan and Russian natives. For each of these years, the number of bowhead whales struck shall not exceed 67, except that any unused portion of a strike quota from any year shall be carried forward and added to the strike quota of any subsequent year, provided that no more than 15 strikes shall be added to the strike quota for any one year.

The basis for the quota was a joint request by the Russian Federation and the United States, showing that the needs of both countries' Native groups could be met with an annual average of 56 landed bowhead whales (or a total of 255 for the Alaska Eskimos and 25 for the Chukotka people over the 5-year period). The annual strike limits and quotas for whales are determined at the beginning of each year after consultation with the Russian government.

At the 52nd annual meeting of the IWC, held in June and July of 2000, the IWC Scientific Committee proposed a structure for block quotas for the bowhead whale aboriginal subsistence hunt to be used as part of the Scientific Committee's proposed revisions to the Aboriginal Whaling Management Plan. This structure calls for five-year blocks with an inter-annual carry-over allowance of up to 50 percent of unused strikes, including strikes from the previous quota block (IWC/52/AS7). The Commission agreed with the proposal from the Scientific Committee in the context of trials.

At the 53rd IWC annual meeting, held in July of 2001, the Commission agreed with the Scientific Committee's recommendations with respect to carry-over. The Scientific Committee also noted that if, under a recommended Strike Limit Algorithm, current aboriginal subsistence need is met, then a revised Schedule paragraph might specify a block strike limit quota with an annual cap on strikes. The Scientific Committee also reiterated its 1999 advice for the Bering-Chukchi-Beaufort Seas stock of bowhead whales, i.e., that it is very likely that a catch limit of 102 whales or less would be consistent with the requirements of the Schedule (IWC/53/4, Report of the Scientific Committee).

Alaska Eskimos have been taking bowhead whales for at least 2,000 years. Alaska Native subsistence hunters take less than one percent of the population of bowhead whales per year. Since 1977, the number of takes has ranged between 14 and 77 per year, depending in part on changes in management strategy and in part on higher estimates of bowhead whale abundance in recent years (NMFS Alaska Marine Mammal Stock Assessments, 2000).

The IWC's 54th annual meeting is scheduled for May of 2002. NMFS is preparing an EA on issuing a quota to the AEWC for a subsistence hunt on bowhead whales for the years 2003 through 2007 in the event that the IWC renews a 5-year aboriginal subsistence quota for bowhead whales. NMFS will evaluate the following four alternatives:

Alternative 1—Grant the AEWC a quota that meets the documented need of Alaskan Eskimos for 255 landed whales over 5 years (2003 through 2007), with an annual strike quota of 67

bowhead whales per year, where no unused strikes are added to the strike quota for any one year.

Alternative 2—Grant the AEWC a quota that meets the documented need of Alaskan Eskimos for 255 landed whales over 5 years (2003 through 2007), with an annual strike quota of 67 bowhead whales per year, where no more than 15 unused strikes are added to the strike quota for any one year.

Alternative 3—Grant the AEWC a quota that meets the documented need of Alaskan Eskimos for 255 landed whales over 5 years (2003 through 2007), with an annual strike quota of 67 bowhead whales per year, where, for unused strikes, up to 50 percent of the annual strike limit is added to the strike quota for any one year.

Alternative 4 (No Action)—Do not grant the AEWC a quota.

Information Solicited

To ensure that the review is comprehensive and based on the best available information, NMFS is soliciting information and comments from any interested party concerning issuing a bowhead whale quota to the AEWC of 255 landed whales over 5 years (2003 through 2007). NMFS is particularly interested in information on the affected environment or environmental consequences of issuing a quota. It is requested that data, information, and comments be accompanied by (1) supporting documentation, and (2) the name, address, and affiliation of person submitting data. Following publication of the draft EA, NMFS will solicit additional public input.

Dated: December 14, 2001.

Rebecca J. Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 01–31263 Filed 12–18–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of forthcoming meetings of the Federal Advisory Committee for the End-to-End Review of the U.S. Nuclear Command and Control System (NCCS). The purpose of these meetings is to conduct a comprehensive and independent review of the NCCS positive measures to assure authorized use of nuclear weapons when directed by the President while assuring against unauthorized or inadvertent use. This meeting will be closed to the public.

DATES: January 29, 2002.

ADDRESSES: NSS, Skyline 3, Suite 500, 5201 Leesburg Pike, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041, (703) 681–8681.

Janet A. Long,

Air Force Federal Register Liaison Officer

[FR Doc. 01–31198 Filed 12–18–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF EDUCATION

President's Commission on Excellence in Special Education

AGENCY: President's Commission on Excellence in Special Education, Department of Education.

ACTION: Notice of a public meeting.

SUMMARY: This meeting describes the schedule and agenda of a forthcoming meeting of the President's Commission on Excellence in Special Education (Commission). Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act in order to notify the public of their opportunity to attend. The Commission's meeting notice is subject to the final appropriation of the Labor, HHS, and Education 2002 budget and may change if this budget is not enacted prior to January 15, 2002.

DATES AND TIMES: Tuesday, January 15, 2002, from 8:30 a.m.–7 p.m.

ADDRESSES: The Commission meeting will be held in Washington, DC. Exact location of hearing is not yet determined because of delays in finalizing meeting logistics.

FOR FURTHER INFORMATION CONTACT: C. Todd Jones, Executive Director, at 202–208–1312 (telephone) or Troy R. Justesen, Deputy Executive Director, at 202–219–0704 (telephone), (202) 208–1953 (fax), *troy.justesen@ed.gov* (e-mail) or mail: President's Commission on Excellence in Special Education, 80 F Street, NW., Suite 408; Washington, DC 20208.

SUPPLEMENTARY INFORMATION: The Commission is established under Executive Order 13227 (October 2, 2001) to collect information and study issues related to Federal, State, and local special education programs with the goal of recommending policies for improving the educational performance of students with disabilities. In furtherance of its duties, the Commission shall invite experts and members of the public to provide information and guidance. The Commission shall prepare and submit a report to the President outlining its findings and recommendations.

The Commission will discuss current and future activities. Specifically, the Commission will focus on planning future Commission meetings and hearings to be held in location across the nation.

Individuals requiring accommodations such as interpreting services, assistive listening devices, materials in alternative formats should notify Troy R. Justesen, at (202) 219–704, no later than January 8, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site will be accessible to individuals with mobility impairments, including those who use wheelchairs.

Records of all Commission proceedings are available for public inspection at the President's Commission on Excellence in Special Education, 80 F Street, NW., Suite 408; Washington, DC 20208 from 9 a.m. to 5 p.m. (EST).

Dated: December 14, 2001.

C. Todd Jones,

Delegated functions of Assistant Secretary for Office for Civil Rights.

[FR Doc. 01–31259 Filed 12–18–01; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–496–000]

Central Vermont Public Service Corporation; Notice of Filing

December 13, 2001.

Take notice that on November 30, 2001, Central Vermont Public Service Corporation (CVPS) tendered for filing a letter stating that CVPS will not file a Forecast 2002 Cost Report for FERC Electric Tariff, Original Volume No. 4, since there are no customers expected to take such service.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 21, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31233 Filed 12–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–497–000]

Central Vermont Public Service Corporation; Notice of Filing

December 13, 2001.

Take notice that on November 30, 2001, Central Vermont Public Service Corporation (CVPS) tendered for filing a letter stating that CVPS will not file a Forecast 2002 Cost Report for FERC Electric Tariff, Original Volume No. 3. No customers will take Tariff No. 3 transmission service during 2002 because such service was terminated effective December 31, 1999. CVPS provides transmission service under its FERC Electric Tariff, First Revised Volume No. 7.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 21, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31234 Filed 12–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–491–000]

Duke Power, a Division of Duke Energy Corporation; Notice of Filing

December 13, 2001.

Take notice that on December 6, 2001, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement under Duke's Wholesale Market-Based Rate Tariff Providing for Sales of Capacity, Energy, or Ancillary Services and Resale of Transmission Rights between Duke and Williams Energy Marketing and Trading Company. Duke requests that the proposed Service Agreement be permitted to become effective on November 12, 2001. Duke states that this filing is in accordance with part 35 of the Commission's Regulations, and that a copy has been served on the North Carolina Utilities Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 27, 2001. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31232 Filed 12–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–39–000]

Nevada Power Company, Complainant, v. Allegheny Energy Supply Company, LLC, Respondent; Notice of Complaint

December 13, 2001.

Take notice that on December 7, 2001, Nevada Power Company (NPC) filed with the Federal Energy Regulatory Commission (Commission) a complaint requesting that the Commission mitigate unjust and unreasonable prices in sales contracts between NPC and Allegheny Energy Supply Company, LLC (Allegheny) entered into in the last half of 2000 and the first half of 2002 for delivery after January 1, 2002.

NPC requests that the Commission set a refund effective date of 60 days from the date of filing of its complaint.

Copies of NPC's filing were served on Allegheny and the Public Utilities Commission of Nevada.

NPC has requested privileged treatment of certain information in the complaint and has filed privileged and public copies of the complaint, a request for privileged treatment, and a protective agreement.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before December 27, 2001. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before December 27, 2001. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31230 Filed 12–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–26–000 and ER02–271–000]

Pleasants Energy, LLC; Notice of Issuance of Order

December 13, 2001.

Pleasants Energy, LLC (Pleasants Energy), an indirect wholly-owned subsidiary of Dominion Energy, Inc. filed with the Commission, in the above-docketed proceeding, a proposed market-based rate tariff under which Pleasants Energy will engage in the sales of capacity, energy, and/or ancillary services and the resale of transmission rights. Pleasants Energy also requested certain waivers and authorizations. In particular, Pleasants Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Pleasants Energy. On December 6, 2001, the Commission issued an order that accepted the tariff for sales of capacity and energy at market-based rates (Order), in the above-docketed proceeding.

The Commission's December 6, 2001 Order granted Pleasants Energy's request for blanket approval under Part 34, subject to the conditions found in Appendix A in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Pleasants Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, Pleasants Energy is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Pleasants Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Pleasants Energy's issuances of securities or assumptions of liabilities.

. . .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 7, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31231 Filed 12–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–36–000]

Williston Basin Interstate Pipeline Company; Notice of Application

December 13, 2001.

Take notice that on November 30, 2001, Williston Basin Interstate Pipeline Company (Williston Basin), P.O. Box 5601, Bismarck, North Dakota 58506–5601, filed in Docket No. CP02–36–000 an Abbreviated Application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Sections 157.7 and 157.18 of the Commission's Regulations for an order authorizing Williston Basin to abandon the transportation of natural gas volumes for Shell Western E&P, Inc. (Shell) pursuant to Rate Schedule T–5 and authorizing Williston Basin to abandon Rate Schedule T–5 of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), in its entirety, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Williston Basin states that the Rate Schedule T–5 Service Agreement with Shell expires by the terms of the agreement on December 1, 2001 and no service has been provided to Shell pursuant to this Service Agreement since March 1998. Williston Basin also states that pursuant to Docket No. CP85–534–000, Rate Schedule T–5 was available only to six specific producers. Williston Basin has previously filed for and received authorization, pursuant to Section 7(b) of the NGA, to abandon service to the other five specific producers. With the termination of the Service Agreement with Shell on December 1, 2001, service under Rate Schedule T–5 will no longer be available to any party and Williston Basin has no further need for Rate Schedule T–5.

Any person desiring to be heard or to make any protest with reference to said application should file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All such motions to intervene or protests should be filed on or before January 3, 2002. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31229 Filed 12–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–31–000, *et al.*]

Pacific Gas and Electric Company, *et al.*; Electric Rate and Corporate Regulation Filings

December 12, 2001.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company, PG&E Corporation on Behalf of Its Subsidiaries Electric Generation LLC, ETrans LLC and GTrans LLC

[Docket Nos. EC02–31–000, EL02–36–000, and CP02–38–000]

Take notice that on November 30, 2001, Pacific Gas and Electric Company (PG&E) and PG&E Corporation (Parent) on behalf of its subsidiaries, Electric Generation LLC, ETrans LLC and GTrans LLC (collectively, the Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act (FPA) and related declaratory orders under sections 201 and 305 of the FPA and section 12 of the Natural Gas Act for authorization of a disposition of jurisdictional facilities. PG&E is a debtor pursuant to Title 11 of the U.S. Code. In accordance with the plan of reorganization pending before the bankruptcy court, Applicants request approval for various transactions required for a reorganization of PG&E that will result in the corporate unbundling of certain of PG&E's operations and spin-off of PG&E (as a retail gas and electric distribution company) from Parent. The application includes a request for privileged treatment of confidential information. A copy of the related filings will be posted on PG&E's Web site at *http://apps.pge.com/regulation.*

Comment date: January 30, 2002, in accordance with Standard Paragraph E at the end of this notice.

2. Mirant Americas Energy Marketing, LP

[Docket No. ER97–4166–009]

Take notice that on December 5, 2001, Mirant Americas Energy Marketing, LP (MAEM) tendered for filing with the Federal Energy Regulatory Commission (Commission) a revised triennial market power analysis in compliance with the November 20, 2001, Commission Order. AEP Power Marketing, Inc. 97 FERC 61,219 (2001).

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER01–3142–004]

Take notice that on December 6, 2001, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) revisions to its Open Access Transmission tariff (OATT), FERC Electric Tariff, First Revised Volume No. 1. The proposed revisions to the Midwest ISO OATT are intended to correct inconsistencies and to clarify certain provisions.

The Midwest ISO seeks an effective date of the later of December 19, 2001 or the date the Midwest ISO begins providing service under its OATT.

The Midwest ISO also seeks waiver of the Commission's regulations 18 CFR 385.2010 (2001) with respect to service on all parties on the official service list in this proceeding. Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment date: December 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. NorthWestern Energy Marketing, LLC

[Docket No. ER02–41–001]

On December 7, 2001, NorthWestern Energy Marketing, LLC, a limited liability corporation organized under the laws of the State of Delaware, filed its response to the December 3, 2001 request of Michael A. Coleman, Director of the Division of Tariffs and Rates-West at the Federal Energy Regulatory Commission (Commission) for the following in the above-referenced proceeding: (1) Confirmation and clarification that NEM requests authorization to make sales of ancillary services utilizing an Internet-based OASIS like site and (2) inclusion in NEM's proposed FERC Electric Rate Schedule No. 1 a provision for refunds in certain circumstances.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Southwestern Public Service Company

[Docket No. ER02–213–001]

Take notice that on December 7, 2001, Southwestern Public Service Company (Southwestern) tendered for filing a First Revised Rate Schedule for Central Valley Electric Cooperative, Inc. (Central Valley) to comply with Order 614 and amend the Exhibit A delivery point listing for service to Central Valley to add a new delivery point.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. California Independent System Operator Corporation

[Docket No. ER02–250–001]

Take notice that on December 7, 2001, the California Independent System Operator Corporation (ISO) tendered for filing an errata to its 2002 Grid Management Charge filed on November 2, 2001. The purpose of the errata is to allow for the Quarterly Adjustment to the ISO's 2002 revenue requirement to reflect anticipated cost savings, or to reflect unanticipated collections of fines and penalties. This provision was intended to be submitted with the November 2, 2001 filing but was omitted due to an oversight. The ISO is requesting that the errata be treated the same as if it was submitted on November 2, 2001 and be made effective January 1, 2002.

The ISO states that this filing has been served on the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and upon all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment date: December 28, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Southwest Power Pool, Inc.

[Docket No. ER02–472–000]

Take notice that on December 4, 2001, Southwest Power Pool, Inc. (SPP) submitted for filing two executed service agreements for Firm Point-to-Point Transmission Service with Southwestern Power Administration (Transmission Customer).

SPP requests an effective date of June 1, 2002 for these service agreements. A copy of this filing was served on the Transmission Customer.

Comment date: December 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. PPL Montana, LLC

[Docket No. ER02–474–000]

Take notice that on December 4, 2001, PPL Montana, LLC (PPL Montana) filed with the Commission an executed service agreement under PPL Montana's FERC Electric Tariff, Original Volume No. 3 between PPL Montana and Enron Power Marketing, Inc. (EPMI).

PPL Montana requests that the Commission grant a waiver so as to permit the service agreement to become effective on September 1, 2001. PPL Montana states that it has served a copy of this filing on EPMI.

Comment date: December 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Holt Company of Ohio

[Docket No. ER02–475–000]

Take notice that on December 4, 2001, the Holt Company of Ohio (Holt) submitted for filing with the Federal Energy Regulatory Commission (Commission) an Umbrella Service Agreement for Short-Term Sales between Holt and American Municipal Power-Ohio (AMP-Ohio). The Umbrella Service Agreement between Holt and AMP-Ohio sets out the general commercial terms and conditions pursuant to which Holt makes sales of electric energy and capacity to AMP-Ohio.

Comment date: December 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Troup Electric Membership Corporation

[Docket No. ER02–476–000]

Take notice that on December 4, 2001, Troup Electric Membership Corporation (Troup), a non-profit electric distribution cooperative filed a petition for authority to sell power at market-based rates, acceptance of its proposed rate schedule and certain waivers.

Troup requests an effective date for its proposed rate schedule that would be 60 days from the date of the filing of its petition or the date of the order accepting Troup's rate schedule for filing.

Comment date: December 27, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. American Transmission Company LLC

[Docket No. ER02–477–000]

Take notice that on December 5, 2001, American Transmission Company LLC (ATCLLC) tendered for filing an executed Distribution-Transmission Interconnection Agreement between ATCLLC and City of Kaukauna.

ATCLLC requests an effective date of June 25, 2001.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. ER02–478–000]

Take notice that on December 5, 2001, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed a Notice of Cancellation of three (3) transmission service agreements under the Open Access Transmission Tariff of Southern Companies (Tariff) (FERC Electric Tariff, Fourth Revised Volume No. 5). These three cancellations include: (1) A non-firm point-to-point transmission service agreement under the Tariff between SCS, as agent for Southern Companies, and Avista Energy, Inc.; (2) a firm point-to-point service agreement under the Tariff between SCS, as agent for Southern Companies, and Avista Energy, Inc.; and (3) a conditional and experimental firm point-to-point transmission service agreement under the Tariff between SCS, as agent for Southern Companies, and Coral Power, LLC.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Company

[Docket No. ER02–479–000]

Take notice that on December 5, 2001, Pacific Gas and Electric Company (PG&E) tendered for filing a new Grid Management Charge Pass-Through Tariff (GMC P–TT) This filing seeks to recover the costs proposed in the California Independent System Operator Corporation's (ISO) GMC filing in Docket No. ER02–250–000 on November 1, 2001.

PG&E requests an effective date of January 1, 2002 or the date the Commission makes effective the ISO's filing in Docket No. ER02–250–000.

Copies of this filing have been served upon the California Public Utilities Commission, all affected customers and the ISO.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. PPL EnergyPlus, LLC

[Docket No. ER02–480–000]

Take notice that on December 5, 2001, PPL EnergyPlus, LLC (PPL EnergyPlus) filed with the Federal Energy Regulatory Commission (Commission) revisions to its Rate Schedule FERC No. 9, a long-term power sales agreement between PPL EnergyPlus and PPL Electric Utilities Corporation (PPL Electric).

PPL EnergyPlus requests that the Commission grant a waiver so as to permit the revised agreement to become effective on January 1, 2002. PPL EnergyPlus states that it has served a copy of this filing upon PPL Electric.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. PPL EnergyPlus, LLC

[Docket No. ER02–481–000]

Take notice that on December 5, 2001, PPL EnergyPlus, LLC (PPL EnergyPlus) filed with the Federal Energy Regulatory Commission (Commission) revisions to its First Revised Rate Schedule FERC No. 4, a long-term power sales agreement between PPL EnergyPlus and PPL Electric Utilities Corporation (PPL Electric).

PPL EnergyPlus requests that the Commission grant a waiver so as to permit the revised agreement to become effective on January 1, 2002. PPL EnergyPlus states that it has served a copy of this filing upon PPL Electric.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. PPL Montana, LLC

[Docket No. ER02–482–000]

Take notice that on December 5, 2001, PPL Montana, LLC (PPL Montana) filed a notice of cancellation of a transaction confirmation between PPL Montana and Enron Power Marketing, Inc. (EPMI).

Notice of the cancellation has been served upon EPMI.

Comment date: December 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31190 Filed 12–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of Licenses and Substitution of Relicense Applicant, Soliciting Comments, Motions to Intervene, and Protests

December 13, 2001.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Application Types and Project Nos:* (1) Transfer of 26 Hydroelectric Licenses for Project Nos. 77–116, 96–031, 137–031, 175–018, 178–015, 233–082, 606–020, 619–095, 803–055, 1061–056, 1121–058, 1333–037, 1354–029, 1403–042, 1962–039, 1988–030, 2105–087, 2106–039, 2107–012, 2130–030, 2155–022, 2310–120, 2467–016, 2661–016, 2687–022, and 2735–071; (2) Request for Substitution of Applicant for New License in Project Nos. 233–081, 1354–005, 2107–010, 2661–012, and 2687–014; and (3) Transfer of Transmission-Line-Only Licenses for Project Nos. 2118–006, 2281–005, 2479–003, 2678–001, 2781–004, 2784–001, 4851–004, 5536–001, 5828–003, 7009–004, and 10821–002.

b. *Date Filed:* November 30, 2001.

c. *Applicants:* Pacific Gas and Electric Company (PG&E), subsidiaries of Electric Generation LLC, and ETrans LLC. The City of Santa Clara, CA, is now and will remain co-licensee for Project No. 619.[1]

d. *Project Names, Federal land use, and Locations:* All of these projects are in California.

Hydroelectric Projects: The Potter Valley Project is in Mendocino National Forest (NF) on the Eel and East Fork Russian Rivers in Lake and Mendocino Counties. The Kerchoff 1 and 2 Project uses Bureau of Land Management (BLM) and Bureau of Reclamation (BOR) land and is in Sierra NF on the San Joaquin River in Fresno and Madera Counties. The Mokelumne Project uses BLM land and is in Stanislaus NF and El Dorado NF on the Mokelumne River, its tributaries, and the Bear River in Alpine, Amador, and Calaveras Counties. The Balch 1 and 2 Project is in Sierra NF and Sequoia NF on the North Fork Kings River in Fresno County. The Kern Canyon Project is in Sequoia NF on the Kern River in Kern County. The Pit 3, 4, and 5 Project is in Shasta NF on the Pit River in Shasta County. The Kilarc-Cow Project uses BLM land on Old Cow and South Cow Creeks in Shasta County. The Bucks Creek Project is in Plumas NF and Lasses NF on Bucks and Grizzly Creeks in Plumas County. The Desabla-Centerville Project uses BLM land and is in Lassen NF on the West Branch Feather River and Butte Creek in Butte County. The Phoenix Project uses BLM land and is in Stanislaus NF on the South Fork of the Stanislaus River in Tuolumne County. The Battle Creek Project is in Lassen NF on Battle Creek in Shasta and Tehama Counties. The Tule River Project is in Sequoia NF on the North Fork of the Middle Fork Tule River in Tulare County. The Crane Valley Project is in Sierra NF on various creeks within the San Joaquin River Basin in Fresno and Madera Counties. The Narrows Project uses U.S. Army Corps of Engineers (COE) land on the Yuba River in Nevada County. The Rock Creek-Cresta Project is in Plumas NF on the North Fork Feather River in Butte and Plumas Counties. The Hass-Kings Project uses COE and BLM land and is in Sierra NF and Sequoia NF on the North Fork Kings River in Fresno County. The Upper North Fork Feather River Project is in Plumas NF and Lassen NF on the North Fork Feather River in Plumas County. The McCloud-Pit Project uses BLM land and is in Shasta-Trinity NF on the McCloud and lower Pit Rivers in Shasta County. The Poe Project is in Plumas NF on the North Fork Feather River in Butte County. The Spring Gap-Stanislaus Project is in Stanislaus NF on the Stanislaus River and tributaries in Calaveras and Tuolumne Counties. The Chili Bar Project uses BLM land and is in El Dorado NF on the South Fork of the American River in El Dorado County. The Drum-Spaulding Project uses BLM land and is in Tahoe NF on the South Yuba and Bear Rivers in Nevada and Placer Counties. The Merced Falls Project uses BLM land on the Merced River in Merced and Mariposa Counties. The Hat Creek 1 and 2 Project is on Hat Creek in Shasta County. The Pit 1 Project is on the Tule, Little Tule, Fall, and Pit Rivers in Shasta County. The Helms Project uses BOR land and is in Sierra NF on Helms Creek and the North Fork Kings River in Fresno County.

Transmission-Line-Only Projects: The Donnells-Standard City Project uses BOR land and is in Stanislaus NF in Tuolumne County. The Woodleaf-Palermo Project is in Plumas NF in Butte County. The French Meadows Project is in El Dorado NF and Tahoe NF in San Francisco County. The Narrows No. 2—Smartville Project uses COE land in Yuba and Nevada Counties. The New Melones Project uses COE and BLM land in Calaveras County. The Rollins Project is in Nevada and Placer Counties. The Sly Creek Project is in Plumas NF in Butte County. The Pardee Tap No. 2 and Camanche Project is in Calaveras, Amador, and San Joaquine Counties. The Monticello Project uses BOR land in Solano and Napa Counties. The Friant Project uses BOR land in Fresno County. The Camp Far West Project is in Placer and Yuba Counties.

e. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

f. *Applicant Contacts:* Ms. Annette Faraglia, Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, CA 94120–7442, (415) 973–7145 and Mr. John A. Whittaker, IV, Winston & Strawn, 1400 L Street NW, Washington, DC 20005, (202) 371–5700.

g. *FERC Contact:* James Hunter, (202) 219–2839.

h. *Deadline for filing motions to intervene, protests, and comments:* 60 days from the issue date of this notice.

i. All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link. Please include the noted project numbers on any comments or motions filed.

j. *Description of Proposal:* PG&E requests approval to transfer PG&E's 26 hydroelectric licenses and 11 transmission-line-only licenses to other entities. The purpose of these applications is to implement one part of a comprehensive Plan of Reorganization (Plan) for PG&E under the U.S.

[1] The application requests waiver of any requirement for making Santa Clara a co-applicant. It also states that PG&E is hopeful that it can obtain Santa Clara's support for the application. Failure to make Santa Clara a co-applicant may delay the processing of the application for Project No. 619.

Bankruptcy Code. Under the Plan, PG&E will separate and restructure its businesses and divide its operations and assets among different operating companies. As to PG&E's FPA Part I jurisdictional facilities, the Plan proposes that PG&E's 26 licensed hydroelectric projects and related licenses be transferred to 26 separate California limited liability company subsidiaries (LLC Subs) of a new generation company (Electric Generation LLC), which will operate and maintain the projects for the LLC Subs under leases with them, and that PG&E's 11 transmission-line-only projects and related licenses be transferred to a new transmission company (ETrans LLC). The names of the LLC Subs mirror the name of the project of which they are to become the new licensee. For example, for the Potter Valley Project No. 77, the name of the LLC Sub that will become the new licensee of the project is Potter Valley Project LLC. After the consummation of the Plan, PG&E, as a reorganized company, will operate as a stand alone local electric and gas distribution business. PG&E intends to retain property rights in certain project facilities that involve energy distribution functions in Project Nos. 77, 96, 137, 175, 233, 619, 803, 1333, 1354, 1403, 2130, 2310, and 2467.

The transfer applications were filed within five years of the expiration of the licenses for Project Nos. 233, 1354, 2107, 2661, and 2687, which are subject of pending relicense applications. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 F.R. 23,756; FERC Stats. and Regs., Regs. Preambles 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (id. at p. 31,438 n. 318).

Several of the transfer applications also contain separate requests for approval of the substitution of the transferee for the transferor as the applicant in the pending relicensing applications filed by PG&E in Project Nos. 233–081, 1354–005, 2107–010, 2661–012, and 2687–014.

k. Copies of these filings are on file with the Commission and are available for public inspection. The filings may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call (202) 208–2222 for assistance). Copies are also available for inspection and reproduction at the addresses in item f above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. An additional copy must be sent to the Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31235 Filed 12–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

December 13, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12135–000.

c. *Date filed:* November 1, 2001.

d. *Applicants:* South Fork Irrigation District and Hot Springs Valley Irrigation District.

e. *Name of Project:* West Valley Pumped Storage Hydroelectric Project.

f. *Location:* The project would utilize the Bureau of Land Management's existing Moon Lake, also known as Tule Lake, on Cedar Creek, and lands within Modoc National Forest in Lassen and Modoc Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Don R. Pope, 9709 W. Fairview Avenue, Littleton, CO 80127–3955, (303) 973–9610.

i. *FERC Contact:* Mr. James Hunter, (202) 219–2839.

j. *Deadline for filing motions to intervene, protests, and comments:* 60 days from the issue date of this notice.

All documents (original and eight copies) should be filed with: Linwood A. Watson, Jr., Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link. Please include the project number (P–12135–000) on any comments or motions filed.

k. *Description of Project:* The proposed pumped storage project would utilize the existing Moon Lake Dam and Reservoir, which are proposed to serve as the upper reservoir, and would consist of: (1) A proposed 90-foot-high, 650-foot-long concrete dam, (2) a proposed reservoir having a surface area of 184 acres at normal water surface elevation 4,950 feet msl, the proposed lower reservoir, (3) a proposed 16,000-foot-long tunnel connecting the reservoirs, (4) a proposed underground powerhouse, containing four generating units with a total installed capacity of 264 megawatts, (5) a proposed 5-mile-long, 230-kilovolt transmission line, and (6) appurtenant facilities. The project would have an annual generation of 542.9 gigawatthours that would be sold to a local utility.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the

instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

r. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31237 Filed 12–18–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11162–002]

Wisconsin Power and Light Company; Notice of Modifying a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

December 13, 2001.

On September 24, 2001, the Federal Energy Regulatory Commission (Commission) issued a notice for the Prairie du Sac Project (FERC No. 11162–002) proposing to establish a restricted service list for the purpose of developing and executing a Programmatic Agreement (PA) for managing properties included in or eligible for inclusion in the National Register of Historic Places. The Prairie du Sac Project is located in Sauk and Columbia Counties in central Wisconsin. Wisconsin Power and Light Company is the prospective licensee.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established. The following changes to the existing restricted service list are noted.

Add ''Larry Garvin, Executive Director of Heritage Preservation, Ho-Chunk Nation of Wisconsin, P.O. Box 667, Black River Falls, WI 54615''.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 01–31236 Filed 12–18–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7119–8]

EPA Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Executive Committee (EC) of the US EPA Science Advisory Board (SAB) will conduct a public teleconference meeting on Friday, January 11, 2002 from 11 am to 1:30 pm Eastern Daylight Time. The meeting will be coordinated through a conference call connection in Room 6013 in the USEPA, Ariel Rios Building, 1200 Pennsylvania Ave, NW, Washington, DC 20004. The public is encouraged to attend the meeting in the conference room noted above. However, the public may also attend through a telephonic link, to the extent that lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Diana Pozun (202–564–4544) or e-mail at *pozun.diana@epa.gov.* The meeting is

[1] 18 CFR 385.2010.

open to the public, however, seating is limited and available on a first come basis.

Purpose of the Meeting: (a) The Executive Committee plans to review a draft outline for a manual to guide formation of SAB panels. This draft outline was prepared by the SAB's Policy and Procedures Subcommittee (PPS).

(b) Although not confirmed at the time this FR Notice was prepared, the EC may also review a draft Commentary from the SAB's Environmental Economics Advisory Committee (EEAC) on the topic: *Importance of Maintaining the Annual Pollution Abatement and Control Expenditures (PACE) Survey.* This Commentary was prepared from discussions at the EEAC meeting on November 30, 2001 (please see 66 FR 54243, dated October 26, 2001 for details of that meeting). Please see the SAB Web site (see below) to determine if this draft Commentary will be on the agenda for the meeting, and to obtain a copy.

Please check with Diana Pozun (see contact information below) prior to the meeting to determine if any other reports will be on the agenda as last minute changes can take place.

Availability of Review Materials: Drafts of both review documents (items ''a'' and ''b'' above) will be available to the public on the SAB Website (*http://www.epa.gov/sab*) approximately two weeks prior to the meeting. A draft meeting agenda will be posted on the same website approximately a week prior to the meeting.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (3 minutes or less) must contact Dr. Donald Barnes, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at *barnes.don@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax, or mail) and received by Dr. Barnes no later than noon Eastern Daylight Time on January 4, 2002. Information on availability of review materials and the draft meeting agenda can be obtained from Ms. Diana Pozun, EPA Science Advisory Board, Mail Code 1400A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (Telephone (202) 564–4544, FAX (202) 501–0323; or via e-mail at: *pozun.diana@epa.gov.*

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site (*http://www.epa.gov/sab*) and in *The FY2000 Annual Report of the Staff Director* which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our Web site.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Dr. Barnes at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: December 13, 2001.

Donald G. Barnes,

Staff Director, EPA Science Advisory Board.

[FR Doc. 01–31243 Filed 12–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30510A; FRL–6810–9]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Makhteshim-Agan of North America, Inc., 551 Fifth Avenue, Suite 1100, New York, NY 10176, to conditionally register the pesticide products Rimon Technical and Rimon 10 EC containing Novaluron a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Suku Oonnithan, Insecticide-Rodenticide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0368; and e-mail address: oonnithan.suku@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	111 112 311	Crop production Animal production Food manufacturing

Categories	NAICS Codes	Examples of Potentially Affected Entities
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/, and select ''fact sheet.''

2. *In person*. The Agency has established an official record for this action under docket control number OPP–30510A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, Arlington, VA (703) 305–5805. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of novaluron, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of novaluron during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registrations

EPA issued a notice, published in the **Federal Register** of April 4, 2001 (66 FR 17882-83) (FRL 6771-8), which announced that Makhteshim-Agan of North America, Inc., 551 Fifth Ave. Suite 1100, New York, NY 10176, had submited an application to register the pesticide products, Rimon Technical and Rimon 10 EC.

Rimon Technical, EPA registration number 11678-57, is used for the manufacturing of end-use product formulations. Rimon 10 EC, EPA registration number 66222-35, is used for the control of insect pests on container grown ornamentals in greenhouses. Both products were approved on September 25, 2001.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 6, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 01–31245 Filed 12–18–01; 8:45 am]

BILLING CODE 6560– 50–S

ENVIRONMENTAL PROTECTION AGENCY

[PF–1037; FRL–6795–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance fora Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain

pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–1037, must be received on or before January 18, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1037 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Anne Ball, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8717; e-mail address: ball.anne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–1037. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–1037 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–1037. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the

name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Biopesticides, Feed additives, Food additives, Pesticides and pests, Pollution prevention, Reporting and recordkeeping requirements.

Dated: December 11, 2001.

Kathleen F. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Growth Products Ltd.

PP 1G6307

EPA has received a pesticide petition [1G6307] from Growth Products Ltd. , PO Box 1259, White Plains, NY 10602, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a temporary tolerance for the microbial pesticide *Bacillus subtilis* GB03.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Growth Products Ltd. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Growth Products Ltd. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product name and Proposed Use Practices

Companion Liquid Biological Fungicide 00.03% *Bacillus subtilis* GB03 is to be used on ≤200 acres in five states to obtain efficacy and phytotoxicity data, evaluate application rates and evaluate timing to establish disease control over a large geographical area on many important specialty crops. Disease severity and intensity will be observed, as well as measurements of root growth in both length and mass, leaf color, and tissue analysis of nutrient levels, all of which are indicators of healthy plants. Food crops to be treated include apples, broccoli, celery, citrus, cotton, grapes (raisin, table and wine), lettuce (iceberg and leaf), melons, onions, potatoes, herbs and spices, strawberries, sunflower, tobacco and tomatoes. The proposed time period for the permit is 2 years.

B. Product Identity/Chemistry

1. *Identity of the pesticide*. The active ingredient is *Bacillus subtilis* GB03 which is the biological pesticide Kodiak™ Concentrate Biological Fungicide which has the EPA Reg. No. 7501-144 maintained by the company Gustafson LLC for use as a seed treatment of agricultural commodities. The company has established a tolerance exemption specific to that use (40 CFR 180.1111). In storage the product is stable for at least 1 year when stored in original packaging according to label directions. The mode of action of *Bacillus subtilis* GB03 results from its colonization of the developing root system of plants, thereby suppressing and controlling root diseases by competition. The organism has been shown to increase root mass and plant health on various agricultural commodities.

2. *Analytical method*. An analytical method for residues is not applicable. Residues of *Bacillus subtilis* GB03 are not expected on agricultural commodities.

C. Mammalian Toxicological Profile

Toxicological data on the active ingredient had been previously accepted to support the current exemption from the requirement of a tolerance for residues for seed treatment of agricultural commodities See 40 CFR 180.1111). These studies include an acute oral toxicity/pathogenicity study in the rat, an acute dermal toxicity study in the rabbit, an acute pulmonary toxicity/pathogenicity study in the rat, an acute intravenous toxicity/pathogenicity study in the rat and a primary eye irritation study in the rabbit. EPA found from a review of these studies that the active ingredient was not toxic to test animals when administered via the oral, dermal, intravenous, or pulmonary routes of exposure. The active ingredient was not infective or pathogenic to test animals when administered via the oral, pulmonary, and intravenous routes. No reports of hypersensitivity had been reported from personnel working with this organism.

Toxicological data on the end-use product Companion Liquid Biological Fungicide had been previously accepted to support a registration for non-food greenhouse use. An acute oral toxicity study showed no toxicity at a dose of 5,000 milligrams/kilograms (mg/kg) in rats (Toxicity category IV), a primary eye irritation study showed mild irritation at a dose of 0.1 milliliters (mL) in rabbits (Toxicity Category IV), and a primary dermal irritation study showed moderate dermal irritation at a dose of 0.5 mL in rabbits (Toxicity Category III). The results of the above studies indicate that there are no significant human health risks associated with the active ingredient or end use product.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Dietary exposure from use of *Bacillus subtilis* GB03 is expected to be minimal. Its use involves low levels of the active ingredient applied to growing plants prior to harvest. Residues if *Bacillus subtilis* GB03 are not expected to be on agricultural commodities. However should any residues occur they would not be of any toxicological concern.

ii. *Drinking water*. Exposure to humans from residues of *Bacillus subtilis* GB03 in consumed drinking water would be unlikely. *Bacillus subtilis* GB03 is a naturally occurring soil micro-organism and it is not known to thrive in aquatic environments. Potential exposure to surface water would be negligible and exposure to drinking water (well or ground water) would be impossible to measure.

2. *Non-dietary exposure*. The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use sites are agricultural settings. However, non-dietary exposures would not be expected to

pose any quantifiable risk due to a lack of residues of toxicological concern.

Personal protective equipment (PPE) mitigates the possibility of exposure for applicators and handlers of the proposed products, when used in agricultural settings.

E. Cumulative Exposure

It is not expected that, when used as proposed, products containing *Bacillus subtilis* GB03 would result in residues that would remain in human food items. The organism is not pathogenic or infective to mammals. There have been no reports of toxins or secondary metabolites associated with this organism, and acute toxicity studies have shown that *Bacillus subtilis* GB03 is non-toxic and non-pathogenic.

F. Safety Determination

1. *U.S. population.* Acute toxicity studies have shown that *Bacillus subtilis* GB03 is not toxic. Residues of this organism are not expected to be on agricultural commodities; however, should residues occur they would not be of toxicological concern. There is a reasonable certainty of no harm to the general U.S. population from exposure to this active ingredient.

2. *Infants and children.* As mentioned above, residues of *Bacillus subtilis* GB03 are not expected to be on agricultural commodities. There is a reasonable certainty of no harm for infants and children from exposure to *Bacillus subtilis* GB03 from the proposed uses.

G. Effects on the Immune and Endocrine Systems

To date there is no evidence to suggest that *Bacillus subtilis* GB03 functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

H. Existing Tolerances

There is an existing EPA tolerance in 40 CFR 180.1111: *Bacillus subtilis* GB03; exemption from the requirement of a tolerance. The biofungicide *Bacillus subtilis* GB03 is exempted from the requirement of a tolerance in or on all raw agricultural commodities when applied as a seed treatment for growing agricultural crops in accordance with good agricultural practices (established June 30, 1992).

I. International Tolerances

A codex Alimentarium Commission Maximum Residue Level (MRL) is not required for *Bacillus subtilis* GB03.

[FR Doc. 01–31249 Filed 12–18–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50891; FRL–6815–3]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 56228–EUP–O from the Animal and Plant Health Inspection Service, U.S. Department of Agriculture (USDA/APHIS) requesting an experimental use permit (EUP) for the use of sodium cyanide in M–44 Cyanide Capsules in M–44 spring-loaded ejectors to control coyotes (*Canis latrans*), red fox (*Vulpes vulpes*), gray fox (*Urocyon cinereoargenteus*) and wild dogs in Idaho and Utah in nesting areas of sage grouse (*Centrocercus urophasianus and C. minimus*). The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket control number OPP–50891, must be received on or before January 18, 2002.

ADDRESSES: Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50891 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: William W. Jacobs, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6406; and e-mail address: jacobs.bill@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those interested in programs for protecting native wildlife species of declining numbers before they are imperiled to such an extent that they are listed as threatened or endangered species. All predacidal uses of sodium cyanide were canceled in 1972. Since that time, use of the compound in M–44 capsules has been reinstated for controlling canids that prey on livestock, that prey on threatened or endangered species, or that are vectors of comminicable diseases. Use of M–44s to protect wildlife that are not yet listed as threatened or endangered has not been directly authorized. The proposed research program is intended to explore the feasibility of use of M–44s to protect sage grouse and Gunnison sage grouse and to obtain new evidence regarding the units' utility and safety when used in that capacity. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–50891. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50891 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

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D. How Should I Handle CBI That I Want to Submit to the Agency?

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E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

In cooperation with State wildlife agencies in Idaho, Utah, and Colorado, USDA/APHIS ''intends to determine whether integrated predation management including the use of M–44s is more effective for sage grouse (*Centrocercus urophasianus, Centrocercus minimus*) protection than predation management that does not include the use of M–44s.''

The proposed research originally was to take place in sage grouse habitat in Wayne and Garfield Counties, Utah, and in Owyhee County, Butte County, and Oneida County, Idaho. The Gunnison sage grouse reportedly occurs in the proposed study site in San Juan County, Utah. According to the application, the Gunnison (*C. minimus*) sage grouse only recently has been recognized as a distinct species and has been proposed for listing as threatened or endangered. Timely listing is said to have been precluded due to a shortage of relevant funding within the U.S. Fish and Wildlife Service. In submissions of July 16, 2001 and July 24, 2001, USDA/APHIS has stated that, for logistical and/or legal reasons, the study locations mentioned here may be replaced by other sites.

Predator management using M–44s and non-pesticidal methods is to be effected in an area of Gunnison sage grouse habitat in San Juan County, Utah. Control operations are to be conducted and monitored by USDA/APHIS personnel. Recruitment of Gunnison sage grouse is to be monitored in the managed areas by the Utah Division of Wildlife Resources. The Colorado Division of Wildlife is to monitor recruitment of Gunnison sage grouse in a neighboring area of Colorado where there is to be ''no formal predator control program.''

Recruitment of sage grouse also is proposed to be monitored in areas subject to predator control in Wayne and Garfield Counties, Utah, and in Owyhee, Oneida, and Butte Counties, Idaho. At the Wayne, Garfield, Owyhee, and Oneida sites, two sage grouse breeding areas are to be protected by predator control methods other than M–44s while two other areas are to be protected by those same methods plus M–44s. At the Butte site, only non-chemical methods are to be used. At all sites, numbers of target and nontarget species taken by each method are to be recorded along with ''the amount of time spent in the application of each management method.'' Artificial nests consisting of three brown chicken eggs placed under a sage bush are to be monitored at some sites. At two Idaho sites, fates of some sage grouse are to be monitored using radio telemetry.

III. What Action is the Agency Taking?

Following the review of the USDA/APHIS application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

Under 40 CFR 172.11(a), EPA is required to publish in the **Federal Register** a notice of receipt of an EUP application if it determines that the permit ''may be of regional or national significance.'' The history, cancellation, and partial reinstatement of predacidal uses of sodium cyanide makes any proposed expansion of current uses potentially ''of regional or national significance'' as does the possible benefit of developing a pesticidal tool to assist in halting declines in populations of certain types of wildlife, thereby precluding their future listing as threatened or endangered species and perhaps keeping habitats occupied by them open for multiple use.

List of Subjects

Environmental protection, Experimental use permits.

Dated: December 6, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 01–31246 Filed 12–18–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50887; FRL–6793–7]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 71065–EUP–E from Growth Products Limited requesting an experimental use permit (EUP) for the fungicide *Bacillus subtilis* GB03. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket control number OPP–50887, must be received on or before January 18, 2002.

ADDRESSES: Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50887 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Anne Ball, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8717; e-mail address: ball.anne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of microbial substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

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2. *In person*. The Agency has established an official record for this action under docket control number OPP–50887. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

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3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

Growth Products Ltd., P.O. Box 1259, White Plains, NY 10602 has requested an EUP for the microbial pesticide Companion™, based on the active ingredient *Bacillus subtilis* Strain GB03. The proposed duration of the proposed program is 2 years. The EUP is being requested to obtain efficacy and phytotoxicity data, evaluate application rates, and evaluate timing to establish disease control. The target pests include root diseases such as *Rhizoctonia*, *Pythium*, *Erwinia*, *Fusarium*, *Phytopthora*, *Verticillium*, *Sclerotinia*, *Botyris*, *Anthracnose*, fire blight, wilt, crown rot, root rot, downy mildew, and damping off.

The proposed experimental program is to cover a total of 200 acres in 5 states, as follows: California, Florida, New York, North Dakota, and Washington. The rate of application of the pesticide is to be: for field crops, 32 oz. per acre in sufficient water to ensure full coverage; for soil drench application, 16 oz. in 100 gallons of water for cell/plug production; and 1 oz. per 30 gallons of water for closed systems (ebb and flow) and hydroponics.

Proposed crop treatment sites include apples, broccoli, celery, citrus, cotton, grapes (raisin, table and wine), herbs and spices, lettuce (iceberg and leaf), melons, onions, potatoes, strawberries, sunflower, tobacco, and tomatoes. Disease severity and intensity will be observed, as well as measurements of root growth in both length and mass, leaf color, and tissue analysis of nutrient levels, all of which are indicators of healthy plants.

Ground methods of application are proposed, including soil drench application by injection into irrigation systems, and closed systems (ebb and flow) and hydroponics by incorporation into closed continuous recirculation systems.

III. What Action is the Agency Taking?

Following the review of the Growth Products Limited application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under 40 CFR part 172, subpart A.

List of Subjects

Environmental protection, Experimental use permits.

December 11, 2001.

Kathleen F. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 01–31247 Filed 12–18–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7119–6]

Extension of Public Comment Period for EPA Staff White Paper That Explores a Number of Options for Addressing Boutique Fuels in the Longer Term

AGENCY: Environmental Protection Agency.

ACTION: Extension of public comment period for EPA Staff White Paper that explores a number of options for addressing boutique fuels in the longer term.

In the November 14, 2001 **Federal Register**, (66 FR 57099) EPA published a notice of availability and requested public review and comment on the Staff White Paper entitled: ''Study of Unique Gasoline Fuel Blends (''Boutique Fuels''), Effects on Fuel Supply and Distribution and Potential Improvements.'' This notice extends the end of the public comment period to January 30, 2002.

FOR FURTHER INFORMATION CONTACT: Julia Macallister, Office of Air Quality and Transportation, (734) 214–4131, or by E-mail at *macallister.julia@epa.gov.*

Dated: December 12, 2001.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency.

[FR Doc. 01–31244 Filed 12–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00755; FRL–6814–8]

Pesticides; Expedited Review of Experimental Use Permits (EUPs) for Conventional Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency seeks public comment on a draft Pesticide Registration (PR) Notice titled ''Guidelines for Expedited Review of Experimental Use Permits (EUPs) for Conventional Pesticides.'' This draft Notice provides criteria that, if met, can result in a greater number of food use EUPs being issued on an expedited basis for conventional pesticides. EUP applications submitted that meet all of the criteria identified in the Notice will be expedited through the Agency's review process and registrants will not need to utilize their priority slots. The Notice applies to all applicants for EUPs for non-antimicrobial, conventional pesticides. The Notice does not apply to biological pesticides because these pesticides present different risk factors and because the Agency has not heard that the lack of biological pesticide EUPs is an issue.

DATES: Comments, identified by docket control number OPP–00755, must be received on or before February 19, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00755 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Rachel Holloman, Registration Division (7505C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7193; fax number: (703) 305–6920; e-mail address: holloman.rachel@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to those persons who apply for EUPs for conventional pesticides or are required to submit data to EPA to register pesticides or to establish tolerances for pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as well as to growers and grower groups. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this Notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document and the PR Notice from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. You can also go directly to the listings from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' '' Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax-on-demand*. You may request a faxed copy of the draft Pesticide Registration (PR) Notice titled ''Guidelines for Expedited Review of Experimental Use Permits (EUPs) for Conventional Pesticides,'' by using a faxphone to call (202) 401–0527 and selecting item [6119]. You may also follow the automated menu.

3. *In person*. The Agency has established an official record for this action under docket control number OPP–00755. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00755 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by E-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00755. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Guidance Does This PR Notice Provide?

The purpose of the proposed PR Notice is to provide criteria that, if met, can result in a greater number of food use EUPs being issued on an expedited basis for conventional pesticides.

Before issuing a new EUP, the Agency must review a subset of the toxicity and exposure data that would otherwise be required for full registration under FIFRA and make several statutory findings. When food is to be treated and allowed to enter domestic commerce under the EUP, EPA must determine (under FFDCA) that ''there is a reasonable certainty of no harm'' from aggregate exposures to the pesticide, including exposures resulting from use under the EUP. Prior to the passage of

the Food Quality Protection Act (FQPA), EPA issued approximately 20 EUPs and established corresponding tolerances each year. Since passage of FQPA, however, the Agency has issued only approximately three EUPs for food uses each year. Information gathered under EUPs can be extremely useful and allow growers and others to gain a better understanding of new and emerging pesticide technologies prior to full market introduction, providing opportunity to refine the product's use. The Agency gains valuable information as well on pesticide alternatives for higher-risk pesticides. This information can be used to support both registration and reregistration decisions EPA must make. In response to requests from interested parties, the Agency undertook an effort to ascertain what conditions and criteria could be developed that would allow for more EUPs, while maintaining EPA's ability to meet the applicable safety findings under FIFRA and FFDCA, resulting in the proposed PR Notice.

B. What Questions/Issues Should You Consider and Provide Specific Comments On and/or Data/Information to Explain Why the Agency Should Make Changes?

1. The Agency is proposing certain acreage limitations based upon a determination that crops treated on these limited acreages would have a marginal impact on both acute and chronic dietary risk. The criteria have been developed in such a way that, if the criteria are satisfied, the Agency can easily determine, based upon existing Agency assessments, that the requisite FIFRA and FFDCA safety findings can be met. How might the Agency expand these limitations, while utilizing existing risk assessments, to ensure that the statutory findings are satisfied? Should the Agency consider a sliding scale of acres per total acres planted of a minor crop? If so, what should that scale be to cover all of the diverse micro-climates, soils, growing seasons and cropping practices for the various commodities across the United States?

2. The Agency is proposing no more than 100 acres per watershed using the U.S. Geological Survey's (USGS) watershed definition as one of the ''risk criteria'' in this proposal. What might EPA consider as other options, to ensure that this criteria is not too confusing and/or too limiting for certain commodity grower industries and/or in certain states so as not to eliminate the possibility of conducting larger scale EUPs under this program?

3. The Agency has proposed several active ingredient criteria for this program, choosing to initially limit the program to those active ingredients which need evaluation prior to registration to ensure growers that the products are effective alternatives to already registered products they know. Along with those criteria, the Agency has proposed other criteria for this program that, if met, could result in a greater number of food use EUPs being issued on an expedited basis. What other criteria might the Agency consider (i.e., ''minor crop priorities'' being added to the active ingredient criteria), and why?

4. What else, if anything, might the Agency consider incorporating into the proposed program to ensure that the field efficacy and crop tolerance data for minor crops, needed by registrants to add minor crop uses to their labels after tolerances are granted, are provided?

5. What other conventional chemicals might the Agency consider adding to the proposed ''eligible pesticides'' listing up front (besides those that will be considered, if submitted, on a case-by-case basis)?

C. PR Notices are Guidance Documents

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision-makers and to pesticide registrants. This notice is not binding on either EPA or pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: December 6, 2001.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 01–31250 Filed 12–18–01; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7120–1]

Lorentz Barrel & Drum Superfund Site Notice of Proposed Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9600 *et seq.*, notice is hereby given that a proposed Agreement and Covenant Not to Sue (Prospective Purchaser Agreement) associated with the Lorentz Barrel & Drum National Priorities List Superfund Site was executed by the United States Environmental Protection Agency (EPA) on November 20, 2001. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a) against 10th Street Land Management, a California corporation, (the Purchaser). The Purchaser plans to acquire the 5-acre parcel constituting the Superfund Site, located at the intersection of S. 10th Street and Alma Avenue, San Jose, California, and operate it as a parking and storage facility for commercial trucks, other vehicles and equipment.

In exchange for the settlement, 10th Street Land Management has agreed to pay EPA $408,000 in cash that will be placed in a special account for use at the Site. In addition, 10th Street Land Management has agreed to maintain the asphalt cap.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before January 18, 2002.

ADDRESSES: The proposed Prospective Purchaser Agreement and additional background documents relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from William Keener, Assistant Regional Counsel (ORC–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference ''10th Street Land Management PPA, Lorentz Barrel &

Drum Superfund Site'' and ''Docket No. 2002–04'' and should be addressed to William Keener at the above address.

FOR FURTHER INFORMATION CONTACT: William Keener, Assistant Regional Counsel (ORC–1), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 972–3940; fax: (415) 947–3570; e-mail: *keener.bill@epa.gov*.

Dated: December 12, 2001.

Jane Diamond,

Acting Director, Superfund Division, U.S. EPA, Region IX.

[FR Doc. 01–31241 Filed 12–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7119–9]

Whitehouse Waste Oil Pits Superfund Site Notice of Proposed De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed *de minimis* settlement.

SUMMARY: Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered a *de minimis* settlement under an Administrative Order on Consent (AOC) to settle claims for past and future response costs at the Whitehouse Waste Oil Pits Superfund Site (Site) located in Whitehouse, Duval County, Florida. Forty-two (42) parties have returned signature pages accepting EPA's settlement offer. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, CERCLA Program Services Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Mr. Ray Strickland at the above address within 30 days of the date of publication.

Dated: November 28, 2001.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 01–31242 Filed 12–18–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–59380; FRL–6816–9]

Approval of Test Marketing Exemption for Certain New Chemicals; With Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME–02–01, TME–02–02, and TME–02–03. The test marketing conditions are described in the TME applications and in this notice.

DATES: Approval of these TMEs are effective December 12, 2001. Written comments will be received until January 3, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–59380 and the TME numbers TME–02–01, TME–02–02, and TME–02–03 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Miriam Wiggins-Lewis, New Chemicals Prenotice Branch, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–9373; e-mail address: Wigginslewis.Miriam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TMEs to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. *In person*. The Agency has established an official record for this action under docket control number OPPTS–59380. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. How and to Whom Do I Submit Comments?

The notice of receipt was published late in the 45–day review period; however, an opportunity to submit comments is being offered at this time.

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–59380 in the subject line on the first page of your response. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center at the address in Unit II.B. between noon and 4 p.m., Monday through Friday, excluding holidays. EPA may modify or revoke the test marketing exemptions if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

A. *By mail*. Submit your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

B. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building, Room 6428, 1201 Constitution Avenue, NW., Washington, DC 20004. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

C. *Electronically*. You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–59380. Electronic comments may also be filed online at many Federal Depository Libraries.

IV. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

V. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

VI. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements (under TSCA section 5(a)(1)(A) and 40 CFR Part 720) and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

VII. What Action is the Agency Taking?

EPA has approved the above-referenced TMEs. EPA has determined that test marketing the new chemical substances, under the conditions set out in the TME applications and in this notice, will not present any unreasonable risk of injury to health or the environment.

VIII. What Restrictions Apply to these TMEs?

The test market time period, production volume, number of customers, and use must not exceed specifications in the applications and this notice. All other conditions and restrictions described in the applications and in this notice must also be met.

TME–02–01, TME–02–02, AND TME–02–03

Date of Receipt: October 12, 2001.

Notice of Receipt: December 7, 2001 (66 FR 63537), (FRL–6815–6).

Applicant: Westvaco.

Chemical: TME–02–01: Butyl acylate, polymer with styrene and methylamino chloride compounds, acetic acid salt.

TME–02–02: Butyl acylate, polymer with styrene and methylamino chloride compounds, lactic acid salt.

TME–02–03: Butyl acylate, polymer with styrene and methylamino chloride compounds, nitric acid salt.

Use: Binding agent in paper coatings.

Production Volume: Confidential.

Number of Customers: Eight.

Test Marketing Period: 365 days, commencing on first day of commercial manufacture of any of these three TMEs.

The following additional restrictions apply to these TMEs. A bill of lading accompanying each shipment must state that the use of these substances are restricted to that approved in the TMEs. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of each TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substances.

IX. What was EPA's Risk Assessment for these TMEs?

EPA identified concerns for potential lung toxicity to workers and environmental toxicity to aquatic organisms. However, these concerns were adequately mitigated because of expected low exposures to workers, lack of releases to surface water, and reduction of aquatic toxicity in the presence of total organic carbon. Therefore, EPA has determined that these test marketing activities will not present an unreasonable risk of injury to human health or the environment.

X. Can EPA Change Its Decision on these TMEs in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: December 12, 2001.

Rebecca S. Cool,

Chief, New Chemicals Prenotice Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 01–31248 Filed 12–18–01;8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7119–7]

Proposed Reissuance of General NPDES Permit (GP) for Alaskan Small Suction Dredging (Permit Number AKG–37–5000)

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed reissuance of a general permit.

SUMMARY: This general permit was originally effective on April 7, 1997, and expires on April 9, 2002. EPA proposes to reissue this general permit with minor changes based on updated information relating to the impact of such mining activity on the environment. EPA is proposing to automatically extend coverage under this general permit, when final, to those facilities covered by the previous permit which submit a Notice of Intent (NOI) prior to April 9, 2002.

DATES: Interested persons may submit comments on the proposed reissuance of the GP to EPA, Region 10 at the address below. Comments must be received by February 4, 2002.

ADDRESSES: Comments on the proposed General Permit should be sent to Director, Office of Water; USEPA Region 10; 1200 Sixth Avenue, OW–135; Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Copies of the Proposed General Permit and Fact Sheet are available upon request. Requests may be made to Audrey Washington at (206) 553–0523 or to Cindi Godsey at (907) 271–6561 or electronically mailed to: *washington.audrey@epa.gov* or *godsey.cindi@epa.gov.* These documents may be found on the Region 10 Web site at *www.epa.gov/r10earth/water.htm*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866: The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

Regulatory Flexibility Act: EPA has concluded that General NPDES permits are permits under the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, and thus not subject to APA rulemaking requirements or the Regulatory Flexibility Act.

Dated: December 5, 2001.

Randall F. Smith,

Director, Office of Water, Region 10, Environmental Protection Agency.

[FR Doc. 01–31240 Filed 12–18–01; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 48]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of the United States (Ex-Im Bank).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1945, the Export-Import Bank of the United States is submitting to the Office of Management and Budget (OMB) a request to review and approve a revised exporter and banker survey. The purpose of the survey is to fulfill a statutory mandate (the Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635) which directs Ex-Im Bank to report annually to the U.S. Congress any action taken toward providing export credit programs that are competitive with those offered by official foreign export credit agencies. The Act further stipulates that the annual report on competitiveness should include the results of a survey of U.S. exporters and U.S. commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with U.S. exporters.

Accordingly, Ex-Im Bank is requesting that the proposed survey (EIB No. 00–02) be sent to approximately 50 respondents, split equally between bankers and exporters. The revised survey is similar to the previous survey, as it asks bankers and exporters to evaluate the competitiveness of Ex-Im Bank's programs vis-á-vis foreign export credit agencies. However, it has been modified in order to account for newer policies and to capture enough information to provide a better analysis of our competitiveness. In addition,the survey will be administered electronically via email, with recipients encouraged to respond electronically as well.

DATES: Written comments should be received on or before January 18, 2002.

ADDRESSES: Direct all written comments or requests for additional information to David Rostker, Office of Management and Budget, Information and Regulatory Affairs, Room 10102, New Executive Office Building, Washington, D.C. 20503, (202) 395–3897.

FOR FURTHER INFORMATION CONTACT: Carlista D. Robinson, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571 (202) 565–3351.

SUPPLEMENTARY INFORMATION: With respect to the proposed collection of information, Ex-Im Bank invites comments as to:

—Whether the proposed collection of information is necessary for the proper performance of the functions of Ex-Im Bank, including whether the information will have a practical use;

—The accuracy of Ex-Im Bank's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Ways to enhance the quality, usefulness, and clarity of the information to be collected, and

—Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Title & Form Number: Annual Competitiveness Report Survey of Exporters and Bankers, EIB Form 00–02.

OMB Number: 3048–0004.

Type of Review: Revision of a currently approved collection.

Annual Number of Respondents: 50.

Annual Burden Hours: 50.

Frequency of Reporting or Use: Annual survey.

Dated: December 14, 2001.

Carlista D. Robinson,

Agency Clearance Officer.

BILLING CODE 6690–01–M

OMB # 3048-0004

ANNUAL COMPETITIVENESS REPORT SURVEY OF EXPORTERS AND BANKERS 2001

PART 1 – EXPORTER/BANKER COMPANY PROFILE

BASIC INFORMATION

Please enter answers in the white boxes.

Company name:	
Person completing survey:	
Title:	
Address:	
Phone number:	
Fax number:	
Email address:	

EXPERIENCE

Please enter answers in the white boxes.

	1 – 3 Years	4 – 10 Years	11 – 20 Years	20+ Years
Years in business:				
Years in exporting/ trade finance:				

Exporters	< $10MM	$10 – 100MM	$100MM - $1Bn	> $1Bn
2001 Total sales volume:				
2001 Total U.S. exports sales volume:				

Bankers	< $10MM	$10 – 100MM	$100MM - $1Bn	> $1Bn
2001 Total export finance credit extended:				
2001 Total Ex-Im Bank supported export finance credit extended:				

Compared to 2000, the volume of your 2001 exports/trade finance were:

Higher	Same	Lower

Public Burden Statement: Public burden reporting for this collection of information is estimated to average 60 minutes per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, and reviewing the final collection. Send comments on the accuracy of this estimate of the burden and recommendations for reducing it to: Office of Management and Budget, Paperwork Reduction Project (#3048-0004) Washington, D.C. 20503. OMB #3048-0004. EIB Form 00-02.

PART 2 – EXPERIENCE WITH FOREIGN ECAs

Please indicate your experience in the past 12-18 months in **using, receiving support from or working with** other ECAs. Please select the appropriate white boxes below.

Export Credit Agency	Frequent	Rare	None
Canada (EDC)			
France (Coface)			
Italy (SACE)			
Germany (Hermes)			
UK (ECGD)			
Japan (JBIC)			
Japan (NEXI)			
Other (please identify below)			

Please indicate your experience in the past 12-18 months in **facing competitors that receive support** from foreign export credit agencies. Please select the appropriate white boxes below.

Export Credit Agency	Frequent	Rare	None
Canada (EDC)			
France (Coface)			
Italy (SACE)			
Germany (Hermes)			
UK (ECGD)			
Japan (JBIC)			
Japan (NEXI)			
Other (please identify below)			

Please provide comments or views on the general competitive environment, trends of specific competitors, etc.

PART 2 – EXPERIENCE WITH FOREIGN ECAs (cont.)

Why do you approach Ex-Im Bank for support? In the white boxes below, please indicate the approximate frequency with which each of the following challenges or needs arise, as well as a typical region or situation that presents such a challenge/need.

Challenge/Need	Frequency (%)	Typical region or situation
Meet official ECA competition		
Lack of market financing		
U.S. government involvement/ leverage		
Other (please identify below)		

PART 3 – COMPETITIVENESS OF EX-IM BANK POLICIES & PROGRAMS

Cost of Ex-Im Bank Financing: Please compare the cost of Ex-Im Bank support against that of the other major ECAs, focusing on the following cost aspects.

Please enter answers in the white boxes. If you do not have experience in the particular area, do not feel obliged to answer.

COST	COMPETITIVENESS					
Exposure Fees						
Medium- and long-term fees for *sovereign* borrowers (as compared to fees charged by other ECAs):	More?		Less?		Neutral?	
	Please provide examples/context for your response:					
Medium- and long-term fees for *non-sovereign* borrowers (as compared to fees charged by other ECAs):	More?		Less?		Neutral?	
	Please provide examples/context for your response:					
Interest Rates						
CIRR support (Ex-Im direct lending support vs. other ECAs' direct lending or interest make-up support):	More?		Less?		Neutral?	
	Please provide examples/context for your response:					
Interest rates offered by commercial banks under Ex-Im Bank *insurance* coverage (as compared to rates offered by banks under other ECAs' cover):	More?		Less?		Neutral?	
	Please provide examples/context for your response:					
Interest rates offered by commercial banks under Ex-Im Bank *guarantee* coverage (as compared to rates offered by banks under other ECAs' cover):	More?		Less?		Neutral?	
	Please provide examples/context for your response:					

PART 3 – COMPETITIVENESS OF EX-IM BANK POLICIES & PROGRAMS (cont.)

Do you have any further comments on cost or structural aspects that affect the competitiveness of Ex-Im Bank programs (e.g., all-in cost, interface with capital markets, interest make-up)?

Non-cost policies: How do the following policies affect Ex-Im Bank's competitiveness? Please rank Ex-Im Bank as more (+), equally (=) or less (-) competitive than other countries' ECAs.
Please enter answers in the white boxes. If you do not have experience in the particular area, do not feel obliged to answer.

	Competitiveness (Ex-Im Bank is +/=/- vis-à-vis others)					
Policy	**Canada**	**France**	**Germany**	**Italy**	**Japan**	**U.K.**
Environment						
Comments/Context:						
U.S. content requirements						
Comments/Context:						
Co-financing						
Comments/Context:						
Local costs support						
Comments/Context:						
Cover policy (e.g., number of markets covered, impact of openness in a given market, sanctions)						
Comments/Context:						
Tied aid policy (e.g., availability of tied aid support, effectiveness of matching, etc.)						
Comments/Context:						

PART 3 – COMPETITIVENESS OF EX-IM BANK POLICIES & PROGRAMS (cont.)

Of the above non-cost policies, which, if changed, would have the greatest impact on Ex-Im Bank competitiveness vis-à-vis its foreign competitors? *Comments/context welcome.*

Please comment on the policy and procedural changes approved in January 2001 for co-financing, foreign content and local costs policies. How have these changes affected your competitiveness? *Context welcome.*

To your knowledge, have you seen competition supported by market window financing? How did this affect the competitiveness of Ex-Im Bank support? *Comments/context welcome.*

How do Ex-Im Bank's products compare with the products offered by other ECAs? Is there a product that Ex-Im Bank does not offer that would be useful to you (e.g., long-term insurance, 95% guarantee, etc.)? *Comments/context welcome.*

OMB # 3048-0004

PART 4 – ADDITIONAL COMMENTS AND SUGGESTIONS

Please use the following space to make additional comments on any aspect of Ex-Im Bank programs, including aspects not specifically addressed in the above questions.

Public Burden Statement: Public burden reporting for this collection of information is estimated to average 60 minutes per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, and reviewing the final collection. Send comments on the accuracy of this estimate of the burden and recommendations for reducing it to: Office of Management and Budget, Paperwork Reduction Project (#3048-0004) Washington, D.C. 20503. OMB #3048-0004. EIB Form 00-02.

PART 5 – EXAMPLES OF COMPETITION

Please provide information regarding the type of competition you faced as a result of Ex-Im Bank costs/policies/programs.

	Cost/Policy/ Program	ECA	Market	Project Description	Describe the competition you faced and the effect that it had on your business (eg forced to change sourcing; lost jobs; lower exports). *If possible, please quantify.*
Example	Cover	EDC	Iran	Power Plant	As a result of Ex-Im Bank's lack of cover for Iran, we were forced to source from outside the United States. This resulted in a loss of over $100 million in U.S. export sales.
1					
2					
3					
4					
5					
6					

[FR Doc. 01–31224 Filed 12–18–01; 8:45 am]
BILLING CODE 6690–01–C

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 01–2869]

IT&E Overseas, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In a Public Notice in this proceeding released on December 11, 2001, the Common Carrier Bureau sought comment on the IT&E Overseas, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the territory of Guam.

DATES: Comments are due on or before January 18, 2002. Reply comments are due on or before February 4, 2002.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith or Anita Cheng, Attorney, or Sheryl Todd, Management Analyst, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On December 6, 2001, IT&E Overseas, Inc. (IT&E) filed with the Commission a petition under section 214(e)(6) seeking designation as an eligible telecommunications carrier (ETC) to receive Federal universal service support for service offered in Guam. Specifically, IT&E contends that the Public Utilities Commission of Guam (Guam Commission) has provided an affirmative statement that it does not regulate commercial mobile radio service (CMRS) carriers, IT&E meets all the statutory and regulatory prerequisites for ETC designation, and designating IT&E as an ETC will serve the public interest. The Common Carrier Bureau seeks comment on the IT&E petition, including the requested service area.

The petitioner must provide copies of its petition to the Guam Commission at the time of filing with the Commission. The Commission will also send a copy of this Notice to the Guam Commission by overnight express mail to ensure that the Guam Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments as follows: Comments are due January 18, 2002 and reply comments are due February 4, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 Twelfth Street, SW., Room CY–B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Dated: December 13, 2001.

Katherine L. Schroder,

Division Chief, Accounting Policy Division.

[FR Doc. 01–31226 Filed 12–18–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011453–001.

Title: Southern Africa/Oceania Agreement.

Parties: Safmarine Container Lines N.V.; Mediterranean Shipping Co. S.A.; A.P. Moller-Maersk Sealand.

Synopsis: The proposed amendment changes one party to reflect a corporate change, increases the maximum dry and reefer container capacity under the agreement, and extends the earliest date for notice of withdrawal.

Agreement No.: 011783.

Title: Lykes/Italia di Navigazione SpA Space Charter and Sailing Agreement.

Parties: Lykes Lines Limited, LLC; Italia di Navigazione SpA.

Synopsis: The proposed agreement authorizes Italia to charter space from Lykes in the trade between ports in the Dominican Republic, Mexico, Costa Rica, Panama, and the Caribbean coasts of Colombia and Venezuela and the U.S. Gulf coast.

By Order of the Federal Maritime Commission.

Dated: December 14, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–31268 Filed 12–18–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 01–12]

Commonwealth Shipping Ltd., Cargo Carriers Ltd., Martyn C. Merritt and Mary Anne Merritt—Submission of Materially False or Misleading Statements to the Federal Maritime Commission and False Representation of Common Carrier Vessel Operations; Notice of Show Cause Proceeding

Notice is given that the Commission, on December 11, 2001, served an Order to Show Cause (''Order'') on Cargo Carriers Ltd., Commonwealth Shipping Ltd., Martyn C. Merritt and Mary Anne Merritt.

Cargo Carriers Ltd. is a licensed ocean transportation intermediary (''OTI'') that operates as a non-vessel-operating common carrier and ocean freight forwarder (FMC Organization No. 13507). It appears that Cargo Carriers Ltd.'s 1999 OTI license application contains false information concerning its qualifying individual and the sharing of office space with a company controlled by Mary Anne Merritt.

Commonwealth Shipping Ltd. holds itself out to the public as an ocean

common carrier in its tariff and FMC–1 form (FMC Organization No. 9587). Martyn and Mary Anne Merritt have been identified as corporate directors of this company, which is located at the same address as Cargo Carriers Ltd. For a common carrier to be considered an ocean common carrier under the Shipping Act of 1984, it must operate a vessel on the high seas between a port in the United States and a foreign port. Commonwealth Shipping Ltd. does not appear to operate any vessels on the high seas between a port in the United States and a foreign port. Therefore, it appears that Commonwealth Shipping Ltd.'s tariff in which it is identified as a vessel-operating common carrier contains false information.

The Order directs Cargo Carriers Ltd. to show cause why the Commission should not order the revocation of its ocean transportation intermediary license for providing materially false or misleading statements to the Commission; and to show cause why the Commission should not order the cancellation of its non-vessel-operating common carrier tariff if its license is revoked. The Order also directs Commonwealth Shipping Ltd. show cause why the Commission should not order the cancellation of its tariff holding itself out to the public as an ocean common carrier because it does not operate as an ocean common carrier. The Order further directs Cargo Carriers Ltd., Commonwealth Shipping Ltd., Martyn C. Merritt and Mary Anne Merritt show cause why the Commission should not order Cargo Carriers Ltd., Commonwealth Shipping Ltd., Martyn C. Merritt and Mary Anne Merritt to cease and desist from future violations of the Shipping Act of 1984.

The full text of the Order may be viewed on the Commission's homepage at *www.fmc.gov*, or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW., Washington, DC.

Any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene no later than December 31, 2001 in accordance with 46 CFR 502.72.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–31269 Filed 12–18–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 4656N.
Name: Barsan International, Inc.
Address: 50 Cragwood Road, Third Floor, South Plainfield, NY 07080.
Date Revoked: October 24, 2001.
Reason: Failed to maintain a valid bond.

License Number: 7913N.
Name: Conterm Consolidation Services (USA), Inc.
Address: 555 East Ocean Blvd., Suite 700, Long Beach, CA 90802.
Date Revoked: October 24, 2001.
Reason: Failed to maintain a valid bond.

License Number: 4148F.
Name: Fleura Meler dba US Western Forwarders.
Address: 19528 Ventura Blvd., Suite 380, Tarzana, CA 91356.
Date Revoked: October 24, 2001.
Reason: Failed to maintain a valid bond.

License Number: 3261N.
Name: Geologistics Services, Inc. dba Matrix Container Lines.
Address: 205 South Whiting Street, Suite 500, Alexandria, VA 22304.
Date Revoked: October 24, 2001.
Reason: Failed to maintain a valid bond.

License Number: 15765N.
Name: Rush Interamerican Cargo Services, Inc.
Address: 10862 NW 27th Street, Miami, FL 33172.
Date Revoked: November 1, 2001.
Reason: Failed to maintain a valid bond.

License Number: 16999N.
Name: Sonic Container Line, Inc.
Address: 870 Sivert Drive, Wood Dale, IL 60191.
Date Revoked: November 1, 2001.
Reason: Failed to maintain a valid bond.

License Number: 16470N.
Name: South Beach Maritime Company.
Address: 8626 NW 55th Place, Coral Springs, FL 33067.
Date Revoked: November 6, 2001.
Reason: Surrendered license voluntarily.

License Number: 16838N.
Name: Webtrans Logistics, Inc. dba ANC International.
Address: 21136 S. Wilmington Avenue, #110, Carson, CA 90810.
Date Revoked: October 27, 2001.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 01–31266 Filed 12–18–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transporation Intermediary License; Correction

In the **Federal Register** Notice listing applicants for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary published October 24, 2001 (66 FR 53795) the reference to Direct Shipping Line is corrected to read: ''Direct Shipping Corp.''

Dated: December 14, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–31267 Filed 12–18–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Harriette H. Charbonneau, Director of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Sec. 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Harold J. Creel, Jr.,

Chairman.

The Members of the Performance Review Board Are:

1. Joseph E. Brennan, Commissioner
1. Antony M. Merck, Commissioner
3. John A. Moran, Commissioner
4. Delmond J.H. Won, Commissioner
5. Norman D. Kline, Chief Administrative Law Judge

6. Frederick M. Dolan, Jr., Administrative Law Judge
7. Paul B. Lang, Administrative Law Judge
8. Bryant L. VanBrakle, Secretary
9. Bruce A. Dombrowski, Executive Director
10. Vern W. Hill, Director, Bureau of Enforcement
11. Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing
12. Florence A. Carr, Director, Bureau of Trade Analysis
13. Austin L. Schmitt, Deputy Executive Director

[FR Doc. 01–31270 Filed 12–18–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 11, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Bancorp IV, Inc., Olathe, Kansas, to become a bank holding company by acquiring at least 80 percent of the voting shares of Bank of Montgomery County, Wellsville, Missouri.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Andrews Holding Company, Andrews, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Commercial State Bank, Andrews, Texas.

Board of Governors of the Federal Reserve System, December 13, 2001.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 01–31192 Filed 12–18–01; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Public Information Collection Requirement Submitted to the Office of Management and Budget for Clearance

AGENCY: Administration on Aging, HHS.

The Administration on Aging (AoA), Department of Health and Human Services, In compliance with the Paperwork Reduction Act (Pub. L. 96–511), is submitting to the Office of Management and Budget for clearance and approval an information collection instrument, entitled Program Evaluation Data Collection Protocols and Tools for the Alzheimer's Disease Demonstration Grants to States Program.

Type of Request: New. The Health Resources and Services Administration previously administered this program.

Use: Consistent with section 398 of the Public Health Service Act, as amended, the AoA requires grantees to collect and report basic client data as part of an overall program evaluation effort. The data collected is used, in aggregate, by AoA to analyze the success and accomplishments of the program, better target resources, and make informed programmatic and policy decisions. Analysis of this data also serves as the basis for the statutorily required report to Congress.

Frequency: Quarterly to Annual, depending on data type, for duration of grant.

Respondents: 25 Alzheimer's Disease Demonstration Grants to States Program grantees.

Estimated number of respondents: The 25 program grantees will obtain data from approximately 125 local service agencies.

Estimated burden hours: 1,713 per year (68.5/ state/ year).

Additional Information: The data collection protocol consists of a client intake (conducted only once for each person served), quarterly service utilization reports, and an annual agency profile report. Most data elements in this collection are basic and essential elements of existing functional and service assessments that will be conducted by grantees as part of normal service provision. Only states that have voluntarily applied for and been awarded a grant under the Alzheimer's Demonstration Program are required to provide these data. A copy of the data collection instrument may be obtained from: Melanie K. Starns, Administration on Aging, Office of Program Development, Cohen Building, Room 4270, 330 Independence Avenue, SW, Washington, DC 20201.

OMB Comment: A comment is best assured of having its full effect if OMB receives it as soon as possible after its publication. Written comments and recommendations for the proposed information collection should be sent to the following address within 30 days of the publication of this notice: Office of Information and Regulatory Affairs, Attention: Allison Herron Eydt, OMB Desk Officer, Room 10325, Office of Management and Budget, Washington, DC 20503.

Dated: November 27, 2001.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 01–31205 Filed 12–18–01; 8:45 am]

BILLING CODE 4151–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Public Information Collection Requirement Submitted to the Office of Management and Budget for Clearance

AGENCY: Administration on Aging, HHS.

The Administration on Aging (AoA), Department of Health and Human Services, in compliance with the Paperwork Reduction Act (Public Law 96–511), is submitting to the Office of Management and Budget for clearance and approval an information collection instrument, entitled Performance (Progress) Reports for Alzheimer's Disease Demonstration Grants to States Program Grantees.

Type of Request: New. The Health Resources and Services Administration previously administered this program.

Use: Consistent with 45 CFR part 74, subpart J, the AoA requires grantees funded under Alzheimer's Disease Demonstration Grants to States Program (ADDGS) to report on the performance of their projects. The report is used by the AoA to review and monitor the grantee's progress in achieving project objectives, to provide advice and assistance, and to take corrective action as necessary.

Frequency: Semiannual.

Respondent: Alzheimer's Disease Demonstration Grants to States Program grantees.

Estimated number of respondents: 25.

Estimated burden hours: 1,000 per year (20 hours for each semiannual report).

Additional Information: Each progress report, typically no more than 10 pages in length, is expected to cover the following subjects: recent major activities and accomplishments, obstacles encountered and solutions, significant findings and events, dissemination activities, and activities planned for the next 6 months. Only states who have voluntarily applied for and been awarded a grant under the Alzheimer's Demonstration Program are required to submit these reports.

OMB Comment: A comment is best assured of having its full effect if OMB receives it as soon as possible after its publication. Written comments and recommendations for the proposed information collection should be sent to the following address within 30 days of the publication of this notice: Office of Information and Regulatory Affairs, Attention: Allison Herron Eydt, AoA Desk Officer, Office of Management and Budget, Washington, DC 20503.

Dated: November 27, 2001.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 01–31206 Filed 12–18–01; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02019]

Cooperative Agreement for the Surveillance, Research, and Prevention of Birth Defects; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the surveillance, research, and prevention of birth defects. The purpose of this program is to aid in the surveillance, research, and prevention of birth defects.

B. Eligible Applicants

Assistance will be provided only to the International Centre for Birth Defects (ICBD). No other applications are solicited.

Located in Rome, Italy, ICBD was established in 1989 as an organization devoted to the prevention of birth defects through surveillance, training, and epidemiologic research. ICBD accomplishes this by serving as the headquarters for the International Clearinghouse for Birth Defects Monitoring Programs. The Clearinghouse is a non-governmental organization comprised of 32 member programs representing 34 countries in Europe, the Americas, Japan, China, South Africa, and Australia. The Clearinghouse's mission is to prevent birth defects through the exchange of information, enabling collaborative research, and consultation and assistance. Specifically, the Clearinghouse:

1. Responds to possible or suspected clusters of congenital malformations with information, monitoring systems, and personnel so that member countries are alerted and preventive action may be taken. This is the primary and most enduring goal of the Clearinghouse;

2. Enables collaborative epidemiological research based on birth defect surveillance data obtained from the member programs. Joint studies with the member programs have attempted to provide an understanding of endemic occurrence as well as temporal and/or geographical clusters of malformations; and

3. Provides expert consultation and assistance.

Note: Title 2 of the United States Code, section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

Approximately $150,000 is available in FY 2002 to fund this award. It is expected that the award will begin on or about April 1, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be utilized only for the purpose and for the activities described and approved in the final award.

1. All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

a. Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives, however, prior approval by CDC officials must be requested in writing.

b. The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: Indirect costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

c. The applicant may contract with other organizations under this program. However, the applicant must perform a substantial portion of the activities including program management and operations, and delivery of prevention services for which funds are required.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To obtain business management technical assistance, contact: Angelia D. Hill, Grants Management Specialist, International Grants and Contracts Branch, Procurement and Grants Office, Centers for Disease Control and

Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2785, E-mail address: *aph8@cdc.gov.*

Program technical assistance may be obtained from: J. David Erickson, National Center on Birth Defects and Developmental Disabilities, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Atlanta, GA 30341–3724, Telephone: (770) 488–7161, E-mail address: *jde1@cdc.gov.*

Dated: December 12, 2001.

Rebecca B. O'Kelley,

Chief, International Grants and Contracts Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–31222 Filed 12–18–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Childhood Lead Poisoning Prevention.

Times and Dates:

8:30 a.m.–5:45 p.m., January 15, 2002.
8:30 a.m.–12:15 p.m., January 16, 2002.

Place: Hilton Crystal City Hotel, 2399 Jefferson Davis Highway, Arlington, VA 22202, telephone 703/418–6800.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 90 people.

Purpose: The Committee shall provide advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The Committee shall also review and report regularly on childhood lead poisoning prevention practices and recommend improvements in national childhood lead poisoning prevention efforts.

Matters to be Discussed: Agenda items include: Updates on Primary Prevention issues, Medicaid Targeted Screening issues, Case Management issues, MMWR Publication Process, Presentations on Milwaukee's Community-Based Environmental Intervention Strategies, National Survey of Lead and Allergens in Housing, and Discussion of Charge for Workgroup Reviewing Evidence of Adverse Effects of Lead. Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

Contact Person for More Information: Becky Wright, Program Analyst, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 1600 Clifton Road, NE, M/S E–25, Atlanta, Georgia 30333, telephone 404/498–1449, fax 404/498–1444.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 10, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–31221 Filed 12–18–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Missouri State Plan Amendment (SPA) 92–33

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to reconsider the decision to disapprove Missouri SPA 92–33 on January 23, 2002, at 10 a.m., Richard Bolling Federal Building; Plaza Room 664; 601 East Twelfth Street; Kansas City, Missouri 64106–2808.

CLOSING DATES: Requests to participate in the hearing as a party must be received by the presiding officer by January 3, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Office of Hearings, Centers for Medicare & Medicaid Services, Suite L 2520 Lord Baltimore Drive, Baltimore, Maryland 21244–2670, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Missouri SPA 92–33.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish HHS procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Centers for Medicare & Medicaid Services (CMS) is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice. Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The issue is whether the provisions of section 1923(f)(1)(A) of the Act and regulations at 42 CFR 447.296(b)(6) would permit the State to increase disproportionate share hospital (DSH) payments under this State plan amendment submitted after September 30, 1991. Missouri submitted SPA 92–33 on November 18, 1991, as part of SPA 91–50. This amendment would provide for an additional payment to 10 DSH hospitals that have the highest Medicaid utilization in the State and had a high volume of nursery and neonatal care days.

Under the Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991 (Pub. L. 102–234), which added section 1923(f)(l)(A) of the Act and the Federal regulation at 42 CFR 447.296(b)(6), the State cannot increase DSH payments to hospitals based on amendments submitted after September 30, 1991, for payments made during the period January 1, 1992, through September 30, 1992, except in very limited circumstances. The reason for this moratorium on DSH payments was so CMS could determine a state's base DSH allotments for an annual period beginning in Federal fiscal year 1993.

The additional DSH payment included in this amendment is not within the statutory exception for payments under certain SPAs submitted to the Secretary between September 30, 1991, and November 26, 1991. This exception applies only to an amendment that designates only DSHs with a Medicaid or low-income utilization percentage at or above the statewide arithmetic mean. In

regulations at 42 CFR 447.296(b), the Secretary has interpreted this exception to apply only when the amendment is intended to limit the state's overall definition of DSH to those specified hospitals.

While the additional DSH payment meets the timing criteria for this exception (it was submitted on November 18, 1991, as part of SPA 91–50), it was not intended to limit the State's overall definition of DSHs to those with a Medicaid or low-income utilization percentage at or below the statewide arithmetic mean. This provision did not concern the designation of DSHs at all, but only concerned the payment rate for some already designated hospitals. It provided for a 10-percent additional payment to certain hospitals otherwise designated and receiving DSH payments. Therefore, CMS found this exception not to apply, and disapproved Missouri SPA 92–33.

The notice to Missouri announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Dana Katherine Martin, Director, Department of Social Services, Broadway State Office Building, P.O. Box 1527, Jefferson City, Missouri 65102

Dear Ms. Martin:

I am responding to your request for reconsideration of the decision to disapprove Missouri State Plan Amendment (SPA) 92–33.

The issue is whether the provisions of section 1923(f)(1)(A) of the Social Security Act (the Act) and regulations at 42 CFR 447.296(b)(6) would permit the State to increase disproportionate share hospital (DSH) payments under this State plan amendment submitted after September 30, 1991. Missouri submitted SPA 92–33 on November 18, 1991, as part of SPA 91–50. This amendment would provide for an additional payment to 10 DSH hospitals that have the highest Medicaid utilization in the State and had a high volume of nursery and neonatal care days.

Under the Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991 (Pub. L. 102–234), which added section 1923 (f)(l)(A) of the Act and the Federal regulation at 42 CFR 447.296(b)(6), the State cannot increase DSH payments to hospitals based on amendments submitted after September 30, 1991, for payments made during the period January 1, 1992, through September 30, 1992, except in very limited circumstances. The reason for this moratorium on DSH payments was so CMS could determine a state's base DSH allotments for an annual period beginning in Federal fiscal year 1993.

The additional DSH payment included in this amendment is not within the statutory exception for payments under certain SPAs submitted to the Secretary between September 30, 1991, and November 26, 1991. This exception applies only to an amendment that designates only DSHs with a Medicaid or low-income utilization percentage at or above the statewide arithmetic mean. In regulations at 42 CFR 447.296(b), the Secretary has interpreted this exception to apply only when the amendment is intended to limit the state's overall definition of DSH to those specified hospitals.

While the proposed amendment meets the timing criteria for this exception (it was submitted on November 18, 1991, as part of SPA 91–50), it does not meet the substantive criteria for this exception. The proposed amendment does not limit the State's overall definition of DSHs to those with a Medicaid or low-income utilization percentage at or below the statewide arithmetic mean. This provision did not concern the designation of DSHs at all, but only concerned the payment rate for some already designated hospitals. It provided for a 10-percent additional payment to certain hospitals otherwise designated and receiving DSH payments. Therefore, CMS found this exception not to apply, and disapproved Missouri SPA 92–33.

I am scheduling a hearing on your request for reconsideration to be held on January 23, 2002, at 10:00 a.m.; Richard Bolling Federal Building; Plaza Room 664; 601 East Twelfth Street; Kansas City, Missouri 64106–2808.

If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, Part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,

Thomas A. Scully.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 10, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–31260 Filed 12–18–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Missouri State Plan Amendment 91–50

AGENCY: Centers for Medicare & Medicaid Services (CMS), (HHS).

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to reconsider the decision to disapprove Missouri State Plan Amendment 91–50, on January 23, 2002, at 10:00 a.m., at the Richard Bolling Federal Building; Plaza Room 664; 601 East Twelfth Street; Kansas City, Missouri 64106–2808.

CLOSING DATES: Requests to participate in the hearing as a party must be received by the presiding officer by January 3, 2002.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Office of Hearings, CMS, Suite L, 2520 Lord Baltimore Drive, Baltimore, Maryland 21244–2670, Telephone: (410)–786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider the decision to disapprove Missouri State Plan Amendment (SPA) 91–50.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Centers for Medicare & Medicaid (CMS) is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The issue is whether this amendment proposed a retroactive effective date that is not consistent with law for an additional disproportionate share hospital (DSH) payment to the 10 highest Medicaid utilization hospitals in the State that had a high volume of nursery and neonatal care days. This SPA was submitted on November 18, 1991, with a proposed effective date of October 21, 1991.

Under the Medicaid Voluntary Contribution and Provider Specific Tax

Amendments of 1991 (Pub. L. 102–234), which added section 1923(f)(1)(A) of the Act and the Federal regulation at 42 CFR 447.296(b)(6), the State cannot increase DSH payments to hospitals based on amendments submitted after September 30, 1991, for payments made during the period January 1, 1992, through September 30, 1992, except in very limited circumstances. The reason for this moratorium on DSH payments was so CMS could determine a state's base DSH allotments for an annual period beginning in Federal fiscal year 1993.

This proposed amendment is not within the statutory exception for payments under certain SPAs submitted to the Secretary between September 30, 1991, and November 26, 1991. This exception applies only to an amendment that designates only DSHs with a Medicaid or low-income utilization percentage at or above the statewide arithmetic mean. In regulations at 42 CFR 447.296(b), the Secretary has interpreted this exception to apply only when the amendment is intended to limit the state's overall definition of DSH to those specified hospitals.

While this proposed amendment meets the timing criteria for this exception, as it was submitted on November 18, 1991, it does not meet the substantive criteria for this exception. The proposed amendment does not limit the State's overall definition of DSH to those with a Medicaid or low-income utilization percentage at or below the statewide arithmetic mean. This proposed amendment did not concern the designation of DSHs, but only concerned the payment rate for some already designated hospitals. This proposed amendment provided for a 10-percent additional payment to certain hospitals otherwise designated and receiving DSH payments. Therefore, CMS found that this exception did not apply and disapproved Missouri SPA 91–50.

The notice to Missouri announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Dana Katherine Martin,
Director, Department of Social Services,
Broadway State Office Building,
P.O. Box 1527,
Jefferson City, Missouri 65102.

Dear Ms. Martin:

I am responding to your request for reconsideration of the decision to disapprove Missouri State Plan Amendment (SPA) 91–50, which was submitted on November 18, 1991.

The issue is whether this amendment proposed a retroactive effective date that is not consistent with law for an additional disproportionate share hospital (DSH) payment to the 10 highest Medicaid utilization hospitals in the State that had a high volume of nursery and neonatal care days. The proposed effective date of the SPA is October 21, 1991.

Under the Medicaid Voluntary Contribution and Provider Specific Tax Amendments of 1991 (Public Law 102–234), which added section 1923(f)(1)(A) of the Social Security Act (the Act) and the Federal regulation at 42 CFR 447.296(b)(6), the State cannot increase DSH payments to hospitals based on amendments submitted after September 30, 1991, for payments made during the period January 1, 1992, through September 30, 1992, except in very limited circumstances. The reason for this moratorium on DSH payments was so the Centers for Medicare & Medicaid Services (CMS), could determine a state's base DSH allotments for an annual period beginning in Federal fiscal year 1993.

This proposed amendment is not within the statutory exception for payments under certain SPAs submitted to the Secretary between September 30, 1991, and November 26, 1991. This exception applies only to an amendment that designates only DSHs with a Medicaid or low-income utilization percentage at or above the statewide arithmetic mean. In regulations at 42 CFR 447.296(b), the Secretary has interpreted this exception to apply only when the amendment is intended to limit the state's overall definition of DSH to those specified hospitals.

While this proposed amendment meets the timing criteria for this exception, as it was submitted on November 18, 1991, it does not meet the substantive criteria for this exception. The proposed amendment does not limit the State's overall definition of DSH to those with a Medicaid or low-income utilization percentage at or below the statewide arithmetic mean. This proposed amendment did not concern the designation of DSHs, but only concerned the payment rate for some already designated hospitals. This proposed amendment provided for a 10-percent additional payment to certain hospitals otherwise designated and receiving DSH payments. Therefore, CMS found that this exception did not apply and disapproved Missouri SPA 91–50.

I am scheduling a hearing on your request for reconsideration to be held on January 23, 2002, at 10:00 a.m.; Richard Bolling Federal Building; Plaza Room 664; 601 East Twelfth Street; Kansas City, Missouri 64106–2808. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, Part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,
Thomas A. Scully.
(Sec. 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: December 10, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 01–31261 Filed 12–18–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Issuance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of emergency exemption issuance.

SUMMARY: The following applicant has been issued a scientific research permit to conduct certain activities with an endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Permits Biologist at 503–231–2063.

SUPPLEMENTARY INFORMATION: The Washington Department of Fish and Wildlife has been authorized via permit number TE–050644, by the U.S. Fish and Wildlife Service's Pacific Region to capture individuals from the Columbia Basin distinct population segment (DPS) of the pygmy rabbit (Brachylagus idahoensis) for a captive propagation program. We issued this permit for the purpose of enhancing the propagation and survival of the Columbia Basin pygmy rabbit. The 30-day public comment period required by the Endangered Species Act (Act) was waived in accordance with section 10(c) of the Act upon a determination that an emergency affecting the health and life of specimens of Columbia Basin pygmy rabbits exists, and that no reasonable alternative is available to the applicant.

The Columbia Basin pygmy rabbit DPS has undergone dramatic annual declines since 1998, and the entire wild portion of this population now consists of fewer than 50 individuals from just 1 known colony on State land in Douglas County, Washington. As part of a captive breeding program, initiated by the Washington Department of Fish and Wildlife (WDFW) during the spring of 2001, an additional 14 individuals from this population are being held in

captivity, including 5 offspring born at the holding facility. The WDFW has scheduled additional capture operations over the next 30 days in order to secure more animals for the captive breeding program. The intent is to capture additional animals from the wild that will complement the genetic profiles and potential breeding scenarios of those already in captivity. Any pygmy rabbits that are not considered essential to the captive breeding program will be left in the wild, and ongoing management to protect this portion of the population will continue.

Delay in the WDFW's planned activities due to the 30-day public comment period could jeopardize the success of the captive breeding program and, ultimately, the long-term security of the Columbia Basin pygmy rabbit. Individuals within the wild portion of this population may experience significant mortality due to increased susceptibility to predation and inclement weather with the onset of winter, and additional animals may not be available for capture later in the season. Even if this population does not undergo further decline this winter, any wild individuals will likely have weakened body conditions and be more susceptible to capture-related stress and mortality if captured later in the season. Capture operations in midwinter may also be compromised by seasonal precipitation and/or low temperatures. Finally, capturing any additional animals later in the season will give them less time to acclimate to the holding facilities, and they may be unavailable for breeding efforts planned for early spring 2002.

Dated: December 6, 2001.

Rowan W. Gould,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 01–31193 Filed 12–18–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–697830

Applicant: Assistant Regional Director, Ecological Services, Region 3, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

The applicant requests an amendment to his permit for scientific take activities of listed species in Region 3 to add the following species for scientific purposes and the enhancement of propagation or survival of the species in the wild, in accordance with listing, recovery outlines, recovery plans and/or other Service work for the species: Canada lynx (*Lynx canadensis*), Whooping crane (*Grus americana*), Lake Erie water snake (*Nerodia sipedon insularum*), Tumbling Creek cavesnail (*Antrobia culveri*), Scaleshell (*Leptodea leptodon*), Cave crayfish (*Cambarus aculabrum*), Short's bladderpod (*Lesquerella globosa*), Short's goldenrod (*Solidago shortii*), and Virginia sneezeweed (*Helenium virginicum*).

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: Mr. Peter Fasbender, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612) 713–5343; Fax: (612) 713–5292; E-mail: *peter—fasbender@fws.gov.*

Dated: December 7, 2001.

Lynn M. Lewis,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 01–31194 Filed 12–18–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit amendment to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE 049738

Applicant: Third Rock Consultants, LLC., Lexington, Kentucky

The applicant requests a permit to take (collect) the following species: Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*), Ozark big-eared bat (*C. t. ingens*), copperbelly water snake (*Nerodia erythrogaster neglecta*), blackside dace (*Phoxinus cumberlandensis*), duskytail darter (*Etheostoma percnurum*), relict darter (*E. chienense*), palezone shiner (*Notropis albizonatus*), pygmy madtom (*Noturus stanauli*), yellowfin madtom (*N. flavipinnis*), slender chub (*Erimystax cahni*), spotfin chub (*Cyprinella monacha*), Cumberland elktoe (*Alasmidonta atropurpurea*), fanshell (*Cyprogenia stegaria*), Cumberlandian combshell (*Epioblasma brevidens*), oyster mussel (*E. capsaeformis*), catspaw (*E. obliquata obliquata*), northern riffleshell (*E. torulosa rangiana*), pink mucket (*Lampsilis abrupta*), slabside pearlymussel (*Lexingtonia dolabelloides*), ring pink (*Obovaria retusa*), little-wing pearlymussel (*Pegias fabula*), orangefoot pimpleback (*Plethobasus cooperianus*), clubshell (*Pleurobema clava*), Cumberland pigtoe (*P. gibberum*), rough pigtoe (*P. plenum*), fat pocketbook (*Potamilus capax*), fluted kidneyshell (*Ptychobranchus subtentum*), Cumberland monkeyface (*Quadrula intermedia*), and Cumberland bean (*Villosa trabalis*). Activities are proposed for studies to identify populations of listed species and to develop methods to minimize or avoid project related impacts to those populations. The scientific research is aimed at enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612) 713–5343; Fax: (612) 713–5292.

Dated: November 29, 2001.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 01–31195 Filed 12–18–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Permits; Draft Environmental Impact Statement on Double-crested Cormorant Management

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings; extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) invites public participation in public meetings associated with the comment period for a Draft Environmental Impact Statement (DEIS) on double-crested cormorant management. The DEIS has been prepared under the authority of the National Environmental Policy Act and the Migratory Bird Treaty Act and analyzes the potential environmental impacts of several management alternatives to address conflicts associated with double-crested cormorants. This notice describes the proposed action and the other five management alternatives analyzed in the DEIS; identifies the locations, dates, and times of public meetings; and identifies the Service official to whom comments may be directed.

DATES: Written comments regarding the DEIS should be submitted by February 28, 2002, to the address below. Dates and times for ten public meetings are listed in the table under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Requests for copies of the DEIS should be mailed to Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Room 634, Arlington, VA 22203. Written comments on the DEIS can be sent by the following two methods:

(1) By mail to the above address; or

(2) By email to: *cormorant_eis@fws.gov.*

Please include your name and mailing address in all comments submitted; anonymous comments will not be considered. The public meetings will be held at the locations listed in the table under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Division of Migratory Bird Management, (703) 358–1714.

SUPPLEMENTARY INFORMATION: On November 8, 1999, we published a notice of intent in the **Federal Register** (64 FR 60826) to prepare an EIS and national management plan for double-crested cormorants in the contiguous United States. This notice began the public scoping period, during which we received over 1,400 written comments and held scoping meetings attended by over 700 individuals. On December 3, 2001, we notified the public of the availability of the DEIS in the **Federal Register** (66 FR 60218). In this notice, we indicated that the comment period would end on January 15, 2002. However, due to the timing of public meetings and requests from the public, we are extending the comment period to February 28, 2002. In preparation of the Final Environmental Impact Statement, we will consider all public comments received on or before this date.

All comments received, including names and addresses, will become part of the public record. The public may inspect comments during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Such requests will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Policy Act regulations (40 CFR 1506.6(f)). Individual respondents may request that we withhold their name and/or home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the document.

Alternatives

The DEIS describes and evaluates six alternatives for the purposes of reducing conflicts associated with cormorants, enhancing the flexibility of natural resource agencies to deal with cormorant conflicts, and ensuring the health and viability of cormorant populations. Alternatives, including the proposed action, were analyzed with regard to their potential impacts on cormorant populations, fish, other birds, vegetation, federally listed threatened and endangered species, water quality and human health, economic impacts (including aquaculture and sport fishing-related economies), fish hatcheries and environmental justice, property losses, and existence and aesthetic values. We analyzed the anticipated environmental effects of the following management alternatives: (1) Continue current cormorant management practices (No Action); (2) implement only non-lethal management techniques; (3) expand current cormorant damage management practices; (4) establish a new Depredation Order to address public resource conflicts (PROPOSED ACTION); (5) reduce regional cormorant populations; and (6) establish frameworks for a cormorant hunting season.

The proposed action would establish a Public Resource Depredation Order that allows State, Federal, and Tribal land management agencies to manage cormorants that are injurious to public resources such as fisheries, vegetation, and other wildlife species. Thus, control actions could take place without a federal permit on the agency's lands and waters or nearby private lands and waters (with appropriate landowner permission). Agencies that conduct control activities under the Public Resource Depredation Order would be subject to reporting and monitoring requirements, overseen by the Service. Additionally, under the proposed action, the current Aquaculture Depredation Order would be expanded to allow control of cormorants by wildlife damage professionals at winter roost sites; and Director's Order 27, restricting the use of depredation permits at public fish cultural facilities, would be revoked.

Public Meetings

Ten public meetings will be held at the locations and times listed below:

Date	City	Location	Time
January 7, 2002	Green Bay, Wisconsin	Ramada Plaza Hotel, 2750 Ramada Way	7:00 PM
January 8, 2002	Mackinaw City, Michigan	Hamilton Inn Select, 701 S. Huron Avenue	7:00 PM
January 16, 2002	Washington, DC	Main Interior Building Auditorium, 1849 C Street, NW	10:00 AM
January 28, 2002	Jackson, Mississippi	Ramada Inn Southwest, 1525 Ellis Avenue	7:00 PM
January 29, 2002	Little Rock, Arkansas	University of Arkansas, Division of Agriculture, Cooperative Extension Service, 2301 S. University Avenue.	7:00 PM

Date	City	Location	Time
February 4, 2002	Athens, Texas	Texas Freshwater Fisheries Center, 5550 Flat Creek Road (Farm Road 2495).	7:00 PM
February 11, 2001	South Burlington, Vermont	Clarion Hotel, 1117 Williston Road	7:00 PM
February 12, 2002	Watertown, New York	Dulles State Office Building, 317 Washington Street	7:00 PM
February 13, 2002	Syracuse, New York	Sheraton University Hotel, 801 University Avenue	7:00 PM
February 19, 2002	Portland, Oregon	Doubletree Hotel-Lloyd Center, 1000 NE Multnomah	7:00 PM

Dated: December 13, 2001.

Marshall Jones,

Acting Director, U.S. Fish & Wildlife Service.

[FR Doc. 01–31272 Filed 12–18–01; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–459]

In the Matter of Certain Garage Door Operators Including Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Granting Complainant's Motion To Add a Respondent

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') issued by the presiding administrative law judge (ALJ) in the above-captioned investigation granting a motion to add Martec Access Products, Inc. as a respondent.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3115. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 16, 2001, based on a complaint filed by The Chamberlain Group, Inc. against six entities: Linear Corporation, Napoleon Spring Works, Inc., Lynx Industries, Inc., Innovative Home Products, Inc., Wayne-Dalton Corporation, and Guardian Access Corporation. 66 FR 37704 (2001). Computime Limited was later added as a respondent. The complaint alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and/or the sale within the United States after importation of certain garage door operators by reason of infringement of certain claims of complainant's U.S. Letters Patents Nos. Re. 35,364 and Re. 36,703.

On September 21, 2001, complainant filed a motion for leave to amend the complaint and notice of investigation to add Martec Access Products, Inc. as a respondent. On October 2, 2001, the Commission investigative attorney filed a response in support of complainant's motion to amend. On October 15, 2001, respondent Wayne-Dalton Corporation (''Wayne-Dalton'') filed a motion to strike complainant's motion to amend. On October 25, 2001, complainant filed a response to Wayne-Dalton's motion to strike complainant's motion to amend. On October 31, 2001, Wayne-Dalton filed a motion for leave to reply to complainant's response to Wayne-Dalton's motion.

On November 26, 2001, the ALJ granted complainant's motion to amend in the subject ID. On the same day the ALJ denied respondent's motion to strike.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

Issued: December 13, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–31254 Filed 12–18–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–454]

In the Matter of Certain Set-Top Boxes and Components Thereof: Notice of a Commission Determination Not To Review an Initial Determination Allowing an Amendment to the Complaint

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting a motion to amend the complaint in the above-captioned investigation to add license agreements and licensees.

FOR FURTHER INFORMATION CONTACT: Mary Elizabeth Jones, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3106. Copies of the subject ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TTD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 16, 2001, based on a complaint by Gemstar-TV Guide International, Inc. of Pasadena, California, and StarSight Telecast, Inc. of Fremont, California, alleging violations of section 337 of the Tariff Act of 1930 in the importation into the

United States, the sale for importation, and the sale within the United States after importation of certain set-top boxes and components thereof by reason of infringement of claims 18–24, 26–28, 31–33, 36, 42–43, 48–51, 54, 57–61, and 66 of U.S. Letters Patent 5,253,066; claims 1, 3, 8, and 10 of U.S. Letters Patent 5,479,268; and claims 14–17, 19, and 31–35 of U.S. Letters Patent 5,809,204.

On August 7, 2001, complainants Gemstar-TV Guide International, Inc. and StarSight Telecast, Inc. moved to amend the complaint to add license agreements and licensees. No party opposed the motion to amend.

On August 23, 2001, the presiding ALJ issued an ID (Order No. 24) granting the motion. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

Issued: December 14, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–31253 Filed 12–18–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the following information collections: (1) Pre-Hearing Statement (LS–18); (2) Overpayment Recovery Questionnaire (OWCP–20); (3) Claim for Continuance of Compensation (CA–12).

DATES: Written comments must be submitted to the office listed in the addressee section below by February 19, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451, E-mail: *pforkel@fenix2.dol-esa.gov.*

SUPPLEMENTARY INFORMATION:

Pre-Hearing Statement (LS–18)

I. Background

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. Title 20, CFR 702.217 provides for the referral of claims under the Longshore Act for formal hearings. This section provides that, before a case is transferred to the Office of Administrative Law Judges, the district director shall furnish each of the parties or their representatives with a copy of a pre-hearing statement form. Each party shall, within 21 days of receipt, complete it and return it to the district director. Upon receipt, the district director shall transmit the form to the Office of the Chief Administrative Law Judge.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to prepare cases for formal hearings under the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Pre-Hearing Statement.

OMB Number: 1215–0085.

Agency Number: LS–18.

Affected Public: Individuals or households; Businesses or other for-profit.

Frequency: On occasion.

Total Annual Respondents/Responses: 6,800.

Time Per Response: 10 minutes.

Estimated Total Burden Hours: 1,088.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $2,595.50.

Overpayment Recovery Questionnaire (OWCP–20)

Background

Both the Federal Coal Mine Health and Safety Act (30 U.S.C. 923(b) and 20 CFR 725.544(c) and the Federal Employees' Compensation Act (5 U.S.C. 8129(b) and 20 CFR 10.320–10.324) provide for the recovery, waiver, compromise, or termination of overpayment of benefits to beneficiaries. The OWCP–20 collects information used to ascertain the financial condition of the beneficiary who has been overpaid to determine if the concealment or improper transfer of assets, and to identify and consider present and potential income and current assets for enforced collection proceedings. The form also provides a means for the beneficiary to explain why he/she is not at fault for the overpayment.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval for this information collection in order to carry out its responsibility under the law to resolve overpayments under the Acts.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Overpayment Recovery Questionnaire.

OMB Number: 1215–0144.

Agency Number: OWCP–20.

Affected Public: Individuals or households.

Frequency: On occasion.

Total Annual Respondents/ Responses: 4,500.

Time Per Response: 45–75 minutes, average 1 hour.

Estimated Total Burden Hours: 4,500.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/ maintenance): $1,665.

Claim for Continuance of Compensation (CA–12)

I. Background

Under 5 U.S.C. 8133, Federal Employees' Compensation Act, and 20 CFR 10.410, eligible dependents of deceased Federal employees receive compensation benefits on account of the employee's death. The OWCP monitors death benefits for criteria which qualify the beneficiary as the employee's dependent under law. The CA–12 is designated for this purpose.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Claim for Continuance of Compensation.

OMB Number: 1215–0154.

Affected Public: Individuals or households.

Frequency: Annually.

Total Annual Respondents/ Responses: 5,900.

Time Per Response: 5 minutes.

Estimated Total Burden Hours: 492.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/ maintenance): $2,006.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 7, 2001.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 01–31211 Filed 12–18–01; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the following information collection: OFCCP Reporting and Recordkeeping Requirements: Supply and Service.

DATES: Written comments must be submitted to the office listed in the addressee section below by December 19, 2001.

ADDRESSES: Please submit comments to Ms. Patricia A. Forkel, U. S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 fax (202) 693–1451, EMail pforkel@fenix2.dol-esa.gov. For questions concerning this information collection request, please contact Mr. James Melvin, U. S. Department of Labor, Office of Federal Contract Compliance Programs, telephone (202) 693–0102.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Federal Contract Compliance is responsible for the administration of equal opportunity programs prohibiting employment discrimination and requiring affirmative action and applies to Federal contractors and subcontractors. OFCCP administers three programs: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (VEVRAA), 38 USC 4212. This information collection contains all recordkeeping and reporting requirements which are derived from the implementing regulations found at Title 41 of the Code of Federal Regulations, chapter 60.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor (DOL) is seeking an extension of this information collection in order to substantiate compliance with nondiscrimination and affirmative action requirements monitored by OFCCP.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: OFCCP Recordkeeping and Reporting Requirements: Supply and Service.

OMB Number: 1215–0072.

Affected Public: Business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Total Annual Respondents/ Responses: 95,311.

Requirements	Average hours per response	Frequency	Number of responses
Recordkeeping:			
Initial Development of AAP	112.65	Once	953
Update of AAP	51.14	Annually	95,054
Maintenance of AAP	51.14	Annually	94,358
Uniform Guidelines on Employee Selection Procedures	2.18	Annually	5,750
Reporting:			
Standard Form 100	3.8	Annually	36,741
Scheduling Letter	4.5	On occasion	2,595
Compliance Check Letter	.4	On occasion	2,000

Estimated Total Burden Hours: 9,967,675.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/ maintenance): $23,096.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 7, 2001.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 01–31212 Filed 12–18–01; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0130(2002)]

Electrical Standards for Construction (29 CFR part 1926, subpart K); Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comment concerning its proposal to increase the existing burden-hour estimates for, and to extend OMB approval of, the information-collection requirements of the Electrical Standards for Construction (29 CFR part 1926, subpart K).[1] These standards specify: Written descriptions of, and testing records for, the assured-equipment grounding-conductor program; warning labels and marks to alert employees to hazardous electrical conditions; and tags to warn against energizing circuits and equipment on which employees are working. Accordingly, these standards prevent deaths and severe injuries among construction employees caused by high-voltage electrical hazards.

DATES: Submit written comments on or before February 19, 2002.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0130(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, OSHA, U.S. Department of Labor, Room N–3621, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collections specified by the Electrical Standards for Construction is available for inspection and copying in the Docket Office, or by requesting a copy from Theda Kenney at (202)693–2044 or Todd Owen at (202)693–2444. For electronic copies of the ICR, contact OSHA on the Internet at *http://www.osha.gov*, then select ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are understandable, and OSHA's estimate of the information-collection burden is correct.

The Electrical Standards for Construction contain a number of paperwork requirements. The following sections describe these requirements in detail.

Section 1926.404(b)(1)(iii) (''Wiring design and protection''). This paragraph requires construction employers who elect not to use ground-fault-circuit interrupters at a job site to establish and implement an assured-equipment grounding-conductor (AEGC) program. This program must cover cord sets, receptacles (that are not part of the building or structure), and equipment connected by cord and plug that employees use, or is available for their use, at construction sites. An employer must ensure that the AEGC program has a written description of the program,

[1] Based on its assessment of the paperwork requirements contained in these standards, the Agency estimates that the total burden hours increased compared to its previous burden-hour estimate. Under this notice, OSHA is *not* proposing to revise these paperwork requirements in any substantive manner, only to increase the burden hours imposed by the existing paperwork requirements.

including the specific procedures adopted by the employer, available at the job site for review and copying by OSHA compliance officers and any affected employee, and has at least one competent person, designated by employer, to implement the program. Prior to use, the employer also must visually inspect, for external defects (*e.g.,* missing or deformed pins, insulation damage) and possible internal damage, each cord set, attachment cap, plug and receptacle of cord sets, and any equipment connected by cord and plug (except fixed cord sets and receptacles not exposed to damage); the employer must repair any damaged or defective equipment prior to use by an employee.

Under the AEGC program, the employer must test all cord sets, receptacles that are not part of the permanent wiring of the building or structure, and cord- and plug-connected equipment that require grounding. Accordingly, employers must test each equipment-grounding connector for continuity and ensure that it is electrically continuous, and test each receptacle and attachment cap or plug for correct attachment of the equipment-grounding conductor, and ensure that the conductor connects to the proper terminal. Employers are to perform these tests before: First using the equipment; returning the equipment to service following repair; and using equipment after any incident that the employer reasonably suspects damaged equipment. In addition, an employer must conduct testing at least every three months, except for fixed cord sets and receptacles not exposed to damage, which employees must test at least every six months. Employers must also record the tests, including the identity of each receptacle, cord set, and cord- and plug-connected equipment that passed the test, and the previous testing date or the interval covered by the last test. The employer is to maintain these records using logs, color coding, or other effective means until replaced by the next record, and make them available at the job site for inspection by OSHA compliance officers and affected employees.

The purpose of the AEGC program is to detect and correct faults in grounding conductors before a high-voltage accident occurs. Grounding conductors often fail because of the rough use they receive at construction sites, and such failure results in improperly grounded equipment; employees who then use the improperly grounded equipment are at risk for death or injury caused by high-voltage electrical shock. The written program identifies the equipment that the competent person must inspect and test, and delineates the procedures they are to use while inspecting and testing the equipment for grounding faults. Making the written program available for review and copying by OSHA compliance officers and affected employees ensures that the program covers the required equipment currently used at the work site, and that the competent person is following appropriate procedures during inspection and testing. Recording the tests results informs OSHA compliance officers and affected employees that the competent person tested the required equipment, and whether or not this equipment is safe to use.

Sections 1926.403(i)(2)(ii) (''General requirements [for installation safety requirements]''); 404(d)(2)(ii) (''Wiring design and protection''); 405(h) (''Wiring methods components, and equipment for general use''); 408(a)(2)(iii) and (a)(3)(i) (''Special systems''); and .416(a)(3) (''General requirements [for safety-related work practices]''). These provisions require employers to warn employees of hazardous electrical conditions, including:

- Section 1926.403(i)(2)(iii). Mark the entrances to rooms and other guarded locations containing exposed live parts with conspicuous warning signs that forbid unqualified employees from entering.
- Section 1926.403(i)(2)(iii). Post warning signs if unauthorized employees may come in contact with live parts.
- Section 1926.405(h). Mark termination enclosures for portable cables over 600 volts (nominal) with a high-voltage hazard warning.
- Section 1926.408(a)(2)(iii). Provide a means to completely isolate equipment for inspection and repairs. Accordingly, employers must ensure that means of isolation not designed to interrupt the load current of the circuit either are capable of interlocking with a circuit interrupter or they must post a sign warning against opening the means under load.
- Section 1926.408(a)(3)(i). Provide a metallic structure on mobile or portable equipment for enclosing the terminals of the power cables, and mark the structure with a sign warning that the structure contains energized parts.
- Section 1926.416(a)(3). Before starting work, determine whether or not an employee, tool, or machine may come into physical or electrical contact with an energized electric power circuit, whether exposed or concealed. If so, the employer must post and maintain proper warning signs where such circuits exist, and advise employees of the location of such circuits, the hazards involved, and the protective measures they are to take.

These warning signs and marks alert unqualified and unauthorized employees to the presence of electrical hazards, and notify electricians of the need to exercise caution and to take other measures to protect themselves when they are near electrical hazards. Therefore, these paperwork requirements prevent death and serious injury among these employees that may result from inadvertent contact with high-voltage electrical hazards.

Section 1926.417(a), (b), and (c) (''Lockout and tagging of circuits''). These paragraphs require that employers tag deactivated controls to energized or deenergized circuits and equipment while employees are working on them. In addition, employers are to render deenergized equipment and circuits inoperative, and attach tags at points that control the release of energy to the deenergized circuits and equipment; these tags must plainly identify these circuits and equipment.

The required tags warn others not to reenergize, or activate the controls to, circuits and equipment on which an employee is working. Accordingly, the tags prevent death and serious injury to these employees caused by high-voltage electrical shock, or by operation of the equipment.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is proposing to increase the existing burden-hour estimate for, and to extend OMB's approval of, the paperwork requirements specified by the Electrical Standards for Construction. The Agency is proposing to increase the total burden-hour estimate from 53,001 hours to 84,803 hours, an increase of 31,802 hours. This

increase in burden hours results in large part from accounting for developing, maintaining, and disclosing AEGC test records, and basing the number of tags required under § 1926.417(a), (b), and (c) (''Lockout and tagging of circuits'') on the number of jobsites instead of the number of employees. In addition, capital costs rose from $0 to $933,333 because OSHA is accounting for the cost of purchasing new, and replacing worn or damaged, warning signs and tags. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of a currently-approved information-collection requirement.

Title: Electrical Standards for Construction (29 CFR part 1926, subpart K).

OMB Number: 1218–0130.

Affected Public: Business or other for-profit; Federal government; State, local, or tribal governments.

Number of Respondents: 70,000.

Frequency of Recordkeeping: On occasion; quarterly; semi-annually; or (initially).

Average Time per Response: Varies from one minute to tag an electrical circuit or piece of equipment, to one hour to develop a written AEGC program.

Total Annual Hours Requested: 84,803.

Total Annual Costs (O&M): $933.333.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–2000 (62 FR 50017).

Signed at Washington, DC, on December 14, 2001.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 01–31271 Filed 12–18–01; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health: Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health: Notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH), established under section 7 of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on issues relating to occupational safety and health programs, policies, and standards for the maritime industries in the United States, will meet in Baltimore, Maryland.

DATES: MACOSH will meet on February 20 and 21, 2002, from 8:30 a.m. until approximately 5 p.m.

ADDRESSES: The Committee will meet at the Baltimore Marriott Waterfront Hotel, 800 Aliceanna Street, Baltimore, Maryland. Mail comments, views, or statements in response to this notice to Joseph V. Daddura, Acting Director, Office of Maritime Safety Standards, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–2086; fax: (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: Joseph V. Daddura, Acting Director, Office of Maritime Safety Standards, OSHA: Telephone (202) 693–2086.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of MACOSH at the time and place indicated above. Individuals with disabilities wishing to attend should contact Theda Kenney at (202) 693–2222 no later than February 1, 2002, to obtain appropriate accommodations.

Meeting Agenda

This meeting will include discussion of the following subjects: MACOSH input on OSHA priorities, vertical tandem lifts in the longshoring industry, an update on the NIOSH diesel exhaust epidemiology study, an NFPA update on the changes to NFPA 306 ''Control of Gas hazards on Vessels,'' discussion of common issues with OSHA Advisory Committee on Construction Safety and Health, and MACOSH work group reports.

Public Participation

Written data, views, or comments for consideration by MACOSH on the various agenda items listed above may be submitted, preferably with copies, to Joseph V. Daddura at the address listed above. Submissions received by February 1, 2002, will be provided to the members of the committee and will be included in the record of the meeting.

Requests to make oral presentations to the Committee may be granted if time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Joseph V. Daddura by February 1, 2002. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: This notice issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC this 12th day of December 2001.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 01–31189 Filed 12–18–01; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Nuclear Management Company, LLC; Palisades Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–20, held by Nuclear Management Company, LLC (NMC or the licensee), for operation of the Palisades Plant, located in Van Buren County, Michigan, and the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would change the limiting conditions for operation (LCOs), surveillance requirements (SRs), and design features in the Technical Specifications (TSs) to provide more flexible fuel loading constraints for the Palisades fuel storage racks and accommodate future core designs. The changes affect TS Sections 3.7.15, ''Spent Fuel Pool (SFP) Boron Concentration,'' 3.7.16, ''Spent Fuel Assembly Storage,'' and 4.3, ''Design Features—Fuel Storage.'' Allowed uranium enrichments for storage would be increased. Enrichment limits for storage racks for unirradiated fuel (currently limited to fuel assemblies having a maximum average planar uranium-235 (U–235) enrichment of 4.20 weight percent) would be increased

to allow storage of 24 unirradiated fuel assemblies having a maximum planar average U–235 enrichment of 4.95 weight percent, subject to proposed loading pattern constraints (e.g., the center row being empty if stored fuel exceeds 4.05 percent U–235 enrichments). Similarly, the storage racks for unirradiated fuel could contain 36 unirradiated fuel assemblies having a maximum planar average U–235 enrichment of 4.05 weight percent, subject to similar proposed loading pattern constraints not necessarily requiring the center row to be empty. Region I storage racks (currently limited to a maximum enrichment of 4.40 weight percent) would be changed to allow storage of unirradiated or irradiated fuel up to 4.95 weight percent enrichment on the basis of revised criticality analyses that assume no credit for soluble boron in the pool under normal conditions, but which take credit for 1350 ppm of soluble boron under accident conditions. Enrichment requirements for Region II fuel storage racks (currently limited to 3.27 weight percent) would be changed to allow storage of unirradiated fuel up to 1.14 weight percent and irradiated fuel of equivalent reactivity up to 4.6 weight percent initial enrichment on the basis of criticality analyses that take credit for 850 ppm of soluble boron in the pool under normal conditions and 1350 ppm of soluble boron under accident conditions. The TSs (*e.g.*, proposed Table 3.7.16–1) for allowable enrichments for fuel storage in Region II of the SFP or the north tilt pit would continue to be based upon a combination of initial enrichment and burnup, but the proposed change would also add decay time to this combination. The existing limitations that Region I racks may contain only ''new or partially spent'' fuel assemblies, and that Region II spent fuel racks may contain only ''partially spent'' fuel assemblies, would be changed to ''new or irradiated fuel assemblies which meet the initial enrichment, burnup, and decay time requirements of [the proposed revision to] Table 3.7.16–1.'' The existing requirements that fuel assemblies in new or Region I fuel storage racks must contain ''216 rods which are either UO_2, $Gd_2O_3UO_2$, or solid metal'' would be deleted. TS 3.7.15 would continue to require that the SFP boron concentration be equal to or greater than 1720 ppm whenever fuel is stored in the spent fuel pool, and be verified weekly. However, the optional Action Statement A.2.2 to immediately initiate action to perform a SFP verification when the concentration is not within limits would be deleted (as would a related portion of the applicability statement regarding verification). The licensee also included changes to the associated TS Bases.

The proposed action is in accordance with the application dated March 2, 2001, as supplemented by letters dated March 29 and September 14, 2001. Although the initial application for a license amendment was tendered by Consumers Energy Company (CEC), CEC has subsequently been succeeded by NMC as the licensed operator of Palisades. By letter dated May 17, 2001, NMC requested that the Commission continue to process and disposition licensing actions previously docketed and requested by CEC.

The Need for the Proposed Action

The proposed action to change the fuel enrichment and burnup combinations acceptable for storage in Region II racks is needed to allow flexibility in fuel placement within the pool. This flexibility is needed because recent fuel assembly enrichments at Palisades have been above the current 3.27 weight percent enrichment limit for Region II racks specified in TS 4.3.1.2. Thus, currently, these assemblies can only be stored in Region I racks that have limited unused storage capacity. This proposed action is also needed to eliminate reliance upon programs (periodic ''blackness'' testing) designed to detect degradation and ensure the integrity of fixed Boroflex poison material in the Region II fuel racks for reactivity control. Since the licensee's criticality calculations for this proposed change do not credit the Boroflex material, periodic blackness testing can be discontinued.

The proposed action to increase fuel storage enrichment limits allows the licensee the flexibility to pursue increased reload fuel enrichments needed to optimize fuel cycle costs.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the potential radiological consequences for both normal and accident conditions associated with the proposed allowed storage of fuel with increased enrichment and SFP criticality calculations supporting the proposed changes. Radiological consequences are only indirectly affected by increasing fuel enrichment. The radiological consequences are primarily a function of operating power and burnup. By increasing fuel enrichment, the same power level can be produced for a longer period of time before refueling. Therefore, the proposed allowed storage of fuel with increased enrichment in the SFP would have no effect on authorized operating power levels, but would result in increasing the burnup levels that can be practically achieved. The proposed license amendment to change the TSs would not affect the allowed maximum burnup for Palisades. The licensee determines this limit using approved fuel assembly and core design methodology stated in the Palisades Final Safety Analysis Report (FSAR), as periodically updated. The evaluation of the radiological consequences resulting from fuel handling accidents (and other accident and transient conditions) would not change since the maximum allowed fuel burnup remains unchanged. The licensee will continue to evaluate reload core designs on a cycle-by-cycle basis as part of its reload safety evaluation process to confirm that the cycle core design adheres to the limits that exist in the accident analyses and TSs and, thus, ensure that each reactor operating cycle will be acceptable.

A. TS Changes Associated with the Fuel Pool in General

The applicability of TS LCO 3.7.15 would be changed from ''When fuel assemblies are stored in the SFP and a verification of the stored assemblies has not been performed'' to ''When fuel assemblies are stored in the Spent Fuel Pool.'' The NRC staff finds this to be a more restrictive change with no environmental impact.

Required Action A.2.2 for LCO 3.7.15 would be deleted because verification alone would not restore the plant to analyzed conditions. Required Action A.2.1 would be renumbered as ''A.2.''

The intent of the existing LCO 3.7.15 is to protect against criticality during a fuel handling accident or misloading event. The licensee's criticality analyses supporting the proposed action credit boron for normal storage as well as for accident scenarios. Therefore, the applicability of LCO 3.7.15 would be extended to all times when fuel assemblies are stored in the Palisades fuel pool and Action A.2.2 would be eliminated.

The change in applicability effectively increases the minimum SRs for spent fuel boron since samples now must be taken even if loading has been verified. Since administrative procedures at Palisades currently require these samples at least weekly, this change would have no effect upon plant operations and would not result in a change to individual or cumulative occupational radiation exposure limits. Similarly, the changed surveillance

would not result in a change to radiological or nonradiological effluent releases during normal or accident scenarios.

B. TS Changes Associated with the Storage Racks for Unirradiated Fuel

The enrichment allowed in TS 4.3.1.3.a would be changed from ''Fuel assemblies having a maximum average planar U_{235} enrichment of 4.20 weight percent'' to ''Twenty-four unirradiated fuel assemblies having a maximum planar average U–235 enrichment of 4.95 weight percent, and stored in accordance with the pattern shown in Figure 4.3.-1; or Thirty-six unirradiated fuel assemblies having a maximum planar average U–235 enrichment of 4.05 weight percent, and stored in accordance with the pattern shown in Figure. 4.3.–1.'' Existing TS 4.3.1.3.c would be deleted and existing TS 4.3.1.3d would be renumbered as 4.3.1.3c.

Since the storage racks for new (unirradiated) fuel are not used to store irradiated fuel, radiological consequences associated with changes in storage limitations are largely limited by the prevention of inadvertent criticality. The licensee's criticality analyses supporting this license amendment request show that the k_{eff} based on a 95-percent probability at a 95-percent confidence level (i.e., the 95/95 k_{eff}) for the new fuel storage rack is less than 0.95 assuming enrichment up to 4.05 weight percent U–235 when fully loaded with 36 unirradiated assemblies. The analyses also show the 95/95 k_{eff} for the new fuel storage rack is less than 0.95 when loaded with only 24 unirradiated assemblies with enrichment up to 4.95 weight percent U–235. The center row of the rack is left empty under this configuration. The licensee provided a graphical description of both loading patterns in Figure 3 of its engineering analysis, EA–SFP–99–03 (Enclosure 2 to the March 2, 2001, supplemental letter), which shows ½ of the new fuel storage rack—the loading pattern continues through the other half of the rack. The design-basis assembly is a 216-pin Palisades assembly. The licensee found earlier assembly types with fewer than 216 pins and guide tubes to be bounded since their enrichment is less than or equal to 3.27 weight percent. The licensee also notes that all assemblies with fewer than 216 pins have been irradiated and, therefore, cannot be stored in the storage racks for new fuel. Any new designs other than those assumed in the licensee's calculation, including but not limited to different numbers of fueled pins, different pellet diameters, and different pellet densities, would first be evaluated by the licensee against the design-basis calculation and in accordance with 10 CFR 50.59, ''Changes, Tests and Experiments,'' before being stored in the racks. Therefore, the NRC staff finds that the proposed TS changes associated with the racks for storage of unirradiated fuel will not have a significant adverse radiological impact.

Storage of higher enriched fresh fuel assemblies in the storage racks for unirradiated fuel, under specific loading patterns, has no effect on nonradiological effluent releases.

C. TS Changes Associated with Region I Fuel Pool Storage

The enrichment allowed in TS 4.3.1.1.a for fuel assemblies in Region I fuel storage racks would be changed from ''having a maximum enrichment of 4.40 weight percent'' to ''having a maximum planar average U–235 enrichment of 4.95 weight percent.'' In TS 4.3.1.1.d, the existing requirement that the Region I fuel storage racks be designed and maintained with:

''New or partially spent fuel assemblies. Assemblies with enrichments above 3.27 weight percent U_{235} must contain 216 rods which are either UO_2 , $Gd_{2O3}UO_2$, or solid metal.''

would be changed to

''New or irradiated fuel assemblies.''

The licensee's criticality analyses supporting this license amendment request show that the 95/95 k_{eff} for the Region I fuel storage racks is less than 0.95 assuming the enrichment of an assembly is less than or equal to 4.95 weight percent U–235. The design-basis assembly is a 216-pin Palisades assembly. Earlier assembly types with less than 216 pins and guide tubes are bounded since their maximum enrichment is less than or equal to 3.27 weight percent. The licensee states that the calculation bounds all assemblies currently stored at Palisades and those the licensee foresees in the future. Any new designs other than those assumed in the licensee's calculation, including but not limited to different numbers of fueled pins, different pellet diameters, and different pellet densities, will first be evaluated by the licensee against the design-basis calculation before being stored in the racks. In addition, before being used in the Palisades core, any new fuel design is first evaluated as part of the licensee's reload safety evaluation to ensure the cycle core design adheres to the limits that exist in the accident analyses and TSs. The licensee performs such analyses using approved methodologies as defined in TS 5.6.5, ''Core Operating Limits Report (COLR),'' and in accordance with 10 CFR 50.59.

In itself, increasing the enrichment level allowed for storage in the Region I fuel pool racks has no effect on possible radiological or nonradiological effluent releases. Since the licensee's criticality design calculations show that K_{eff} remains below 0.95 in all normal storage and accident scenarios, there is no significant increased threat of radiation exposure due to accidental criticality in the fuel pool. If the licensee should decide to pursue reload enrichments higher than the current storage limit (i.e., greater than 4.40 weight percent), the result would not adversely impact the environmental effects since radiological impacts are only indirectly affected by increasing fuel enrichment. The radiological impacts are primarily a function of operating power and burnup. The purpose of increased fuel enrichment is the ability to produce the same power level for a longer period of time before refueling. Therefore, the proposed allowed storage of fuel with increased enrichment in the SFP would have no effect on authorized operating power levels, but would result in increasing the burnup levels that can be practically achieved. Again, licensees evaluate the use of fuel (at any enrichment and burnup) on a cycle-by-cycle basis to ensure that parameters such as assembly discharge burnups are within limits specified in the FSAR.

Therefore, the proposed TS changes associated with Region I fuel pool storage have no significant adverse radiological impact. These changes also have no adverse nonradiological impact.

D. TS Changes Associated with Region II Fuel Pool Storage

The licensee proposes the following TS changes regarding the storage of fuel assemblies in Region II of the fuel pool:

LCO 3.7.16 currently requires that ''The combination of initial enrichment and burnup of each fuel assembly stored in Region II shall be within the requirements of Table 3.7.16–1.'' This would be changed to require that ''The combination of initial enrichment, burnup, and decay time of each irradiated fuel assembly stored in Region II shall be within the requirements of Table 3.7.16–1.'' Thus, this change would add the decay time of each assembly as an additional requirement for storage in Region II. Similarly, the associated SR (SR 3.7.16.1) to ''Verify by administrative means that the initial enrichment and burnup of each spent fuel assembly stored in Region II is in accordance with Table 3.7.16–1'' would be changed to

''Verify by administrative means that the combination of initial enrichment, burnup, and decay time of each irradiated fuel assembly stored in Region II is in accordance with Table 3.7.16–1.'' Existing TS Table 3.7.16–1 would be replaced by Table 4 from the licensee's engineering analysis, EA–SFP–99–03, which specifies Region II burnup requirements after various periods of decay. The existing requirement of TS 4.3.1.2.a that the Region II fuel storage racks are designed and shall be maintained with fuel assemblies ''having a maximum enrichment of 3.27 weight percent'' would be changed to ''having a maximum planar average U-235 enrichment of 4.60 weight percent.'' A new TS 4.3.1.2.b would be added to require that the Region II fuel storage racks be designed and maintained with ''K_{eff} [less than] 1.0 if fully flooded with unborated water, which includes allowances for uncertainties as described in Section 9.11 of the FSAR.'' Existing TS 4.3.1.2.b would be renumbered as 4.3.1.2.c and revised to require that Region II fuel storage racks be designed and maintained with K_{eff} less than or equal to 0.95 ''if fully flooded with water borated to 850 ppm,'' rather than ''if fully flooded with unborated water.'' Existing TSs 4.3.1.2.c and 4.3.1.2.d would be renumbered 4.3.1.2.d and 4.3.1.2.e, respectively. TS 4.3.1.2.e (former 4.3.1.2.d) would also be changed to require that Region II fuel storage racks be designed and maintained with ''[p]artially spent fuel assemblies which meet the initial enrichment and burnup requirements of Table 3.7.16–1,'' to ''[n]ew or irradiated fuel assemblies which meet the initial enrichment, burnup, and decay time requirements of Table 3.7.16–1.'' A new figure based upon Figure 3 of the licensee's engineering analysis, EA–SFP–99–03, and showing storage rack loading patterns for new fuel would be added as TS Figure 4.3–1.

The licensee's criticality analyses, which are the basis for this license amendment request, show that the 95/95 K_{eff} for the Region II fuel storage racks is less than 0.95 assuming the enrichment of an assembly is less than or equal to 4.60 weight percent U–235 and assuming 850 ppm boron in the pool water. The analyses also ensure that K_{eff} is less than 1.0 assuming no boron. The proposed revision to Table 3.7.16–1 contains the burnup, enrichment, and decay time combinations shown to be acceptable in the licensee's engineering analysis, EA–SFP–99–03.

Boron is already present in the Palisades SFP. Likewise, the fuel stored in the pool is burned to levels dictated by core design constraints. Fuel assemblies experience radioactive decay while they are stored. These characteristics of the fuel would not be changed by the proposed amendment. Therefore, crediting the reactivity effects associated with boron, burnup, and decay in the design-basis criticality calculations has no effect upon possible radiological or nonradiological effluent releases. Since the criticality design calculations show that K_{eff} remains below 0.95 in all normal storage and accident scenarios, there is no increased threat of radiation exposure due to accidental criticality in the fuel pool.

In general, the proposed burnup and enrichment combinations that are acceptable for storage in the Region II racks require higher burnups for a given enrichment than those present in the current TS Table 3.7.16–1. This increase in allowed minimum burnup does not affect radiological consequences since the actual fuel burnup is dictated by core design constraints and may be significantly higher than that required for storage in Region II fuel storage racks (up to 58,900 MWD/MTU assembly average for recent Palisades reload fuel, as discussed in FSAR Section 3.2.3, Nuclear Limits). In general, higher burnup has a limited effect on the short-lived isotope inventory in the fuel due to the development of an equilibrium condition between production and decay. Instead, extended burnups increase the fraction of the short-lived isotopes that migrate into the fuel-clad gap region (see, for example, NUREG/CR–5009, ''Assessment of the Use of Extended Burnup Fuel in Light Water Power Reactors,'' prepared for the U.S. Nuclear Regulatory Commission by Pacific Northwest). With increasing burnup, there is no decrease in fuel rod integrity or the probability of fuel failures during normal operations, as long as actual burnup does not exceed the vendor-approved values. However, with the increased short-lived activity in the clad-gap region, increased burnup could result in increased activity being released into the reactor coolant under normal operation if fuel failures were to occur. Maximum fuel burnup limits are not being changed by this proposed amendment.

E. Conclusions

On the basis of the above assessment, the NRC staff concludes that the proposed TS changes regarding the storage of new and irradiated fuel, including fuel with increased allowed enrichment (up to 4.95 weight percent), will not have a significant adverse environmental effect.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for Palisades dated June 1972, as supplemented.

Agencies and Persons Consulted

On December 12, 2001, the NRC staff consulted with the Michigan State official, Mary Ann Elzerman, regarding the environmental impact of the proposed action. The State official agreed with the NRC staff's proposed issuance of this Environmental Assessment and Finding of No Significant Impact.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Further details with respect to the proposed action may be found in the licensee's application dated March 2, 2001, as supplemented by letters dated March 29 and September 14, 2001.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 12th day of December, 2001.

Darl S. Hood,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–31218 Filed 12–18–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

AmerGen Energy Company, LLC; Oyster Creek Nuclear Generating Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to AmerGen Energy Company, LLC (AmerGen or the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The proposed action is a one-time exemption from the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, Appendix E, Items IV.F.2.b and c regarding conduct of a full participation exercise of the onsite and offsite emergency plans every 2 years. The proposed action is in accordance with the licensee's application for an exemption dated October 8, 2001. Under the proposed exemption, AmerGen would reschedule the exercise originally scheduled for October 16, 2001, and complete the exercise requirements in calendar year 2002. However, the next full participation exercise will continue to be scheduled biennially from 2001. The licensee requested relief from section IV.F.2.c of Appendix E to 10 CFR part 50. Although the intent of the request is clear, i.e., the need to postpone the biennial exercise, the citation of regulations to accomplish that intent may not be complete. Section IV.F.2.b of Appendix E to 10 CFR part 50 may also be cited for completeness. The analysis in the Commission's Safety Evaluation encompassed the technical issues necessary to grant a schedular exemption from sections IV.F.2.b and c for the conduct of the biennial exercise.

The Need for the Proposed Action

10 CFR part 50, Appendix E, Items IV.F.2.b and c require each licensee at each site to conduct an exercise of its onsite and offsite emergency plan every 2 years. Federal agencies (the Nuclear Regulatory Commission for the onsite exercise portion and the Federal Emergency Management Agency for the offsite exercise portion) observe these exercises and evaluate the performance of the licensee and State and local authorities having a role under the emergency plan.

The licensee had initially planned to conduct an exercise of its onsite and offsite emergency plan on October 16, 2001, within the required 2-year interval. However, AmerGen has decided to postpone the exercise as a result of the ongoing national security threat in the United States, and the response, recovery, and other continuing offsite agency activities associated with the September 11, 2001, attacks on the World Trade Center.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action involves an administrative activity (a scheduler change in conducting an exercise) unrelated to plant operations.

The proposed action will not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement dated December 1974 for the Oyster Creek Nuclear Generating Station.

Agencies and Persons Consulted

In accordance with its stated policy, on November 8, 2001, the staff consulted with the New Jersey State official, Rich Pinney of the New Jersey Department of Environment and Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments. In addition, by letter dated September 27, 2001, the Federal Emergency Management Agency indicated support for rescheduling the exercise.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 8, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 13th day of December, 2001.

For the Nuclear Regulatory Commission.

Helen N. Pastis,

Senior Project Manager, Section 1, Project Directorate 1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–31215 Filed 12–18–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company Turkey Point Plant, Units 3 and 4; Exemption

1.0 Background

The Florida Power and Light Company (the licensee) is the holder of Facility Operating License Nos. DPR–31 and DPR–41, which authorize operation of the Turkey Point Plant, Units 3 and 4. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized water reactors located in Miami-Dade County in Florida.

2.0 Request/Action

By letter dated October 23, 2000, Florida Power and Light, the licensee for Turkey Point Plant, requested, among other things, an exemption from certain requirements of 10 CFR 50.44; 10 CFR part 50, Appendix A, General Design Criterion 41, 42, and 43; and 10 CFR part 50, Appendix E, section VI; related to the hydrogen control system (i.e., recombiners, hydrogen monitors, and post-accident containment vent system). The proposed exemption would remove the above requirements from the Turkey Point Plant design basis. The staff has reviewed the information provided and concludes that the requested exemption for the hydrogen recombiners and the post-accident containment vent system are justified. The staff will act on the exemption request for the containment hydrogen monitors, the requested modification to the revised Confirmatory Order issued on October 5, 2000, and the revision to the Technical Specifications related to the post-accident containment vent system and the hydrogen monitors by separate correspondence.

The post-accident containment vent system is provided to facilitate controlled venting through adding air (Service Air backed by Instrument Air) to the reactor containment and venting air from the containment to effectively maintain hydrogen concentration below 4.0 volume percent. Regulatory requirements for the hydrogen control system are specified in 10 CFR 50.44 and 10 CFR part 50, Appendix A, (General Design Criteria 41, 42, and 43). Additional staff guidance is provided in Regulatory Guide (RG) 1.7. Staff review and acceptance criteria are specified in Section 6.2.5 of the Standard Review Plan.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

For this exemption, these special circumstances include consideration that the quantity of hydrogen prescribed by 10 CFR 50.44(d) and RG 1.7 which necessitated the need for hydrogen recombiners and the post-accident containment vent system would be bounded by the hydrogen generated during a severe accident. As shown in the attached safety evaluation, the staff has found that the relative importance of hydrogen combustion for large, dry containments with respect to containment failure is quite low. This finding supports the argument that the hydrogen recombiners are not risk significant from a containment integrity perspective and that the risk associated with hydrogen combustion is not from design basis accidents but from severe accidents. Studies have shown that the majority of risk to the public is from accident sequences that lead to containment failure or bypass, and that the contribution to risk from accident sequences involving hydrogen combustion is actually quite small for large, dry containments such as Turkey Point's. This is true despite the fact that the hydrogen produced in these events is substantially larger than the hydrogen production postulated by 10 CFR 50.44(d) and RG 1.7. Hydrogen combustion sequences that could lead to early containment failure typically involve up to 75 percent core metal-water reaction. Hydrogen combustion sequences that could lead to late containment failure involve additional sources of hydrogen due to the interaction of corium and the concrete basemat after vessel breach. Although the recombiners and the post-accident containment vent system are effective in maintaining the RG 1.7 hydrogen concentration below the lower flammability limit of 4.0 volume percent (for a design basis loss-of-coolant accident (LOCA)), they are overwhelmed by the larger quantities of hydrogen associated with severe accidents that would typically be released over a much shorter time period (e.g., 2 hours). However, NUREG/CR–4551 states that hydrogen combustion in the period before containment failure is considered to present no threat to large, dry containments. Table A.4–5 of NUREG/CR–4551 shows that the contribution of hydrogen combustion to late containment failure is also very small. Therefore, the relative importance of hydrogen combustion for large, dry containments with respect to containment failure has been shown to be quite low.

The recombiners can, however, prevent a subsequent hydrogen burn, if needed, due to radiolytic decomposition of water and corrosion in the long term. Analysis performed in accordance with the methodology of RG 1.7 shows that the hydrogen concentration will not reach 4.0 volume percent for 15 days after initiation of a design basis LOCA. Additionally, as described in the attached safety evaluation, hydrogen concentrations on the order of 6.0 volume percent or less are bounded by hydrogen generated during a severe accident and would not be a threat to containment integrity since there is ample time between burns to reduce elevated containment temperatures using the installed containment heat removal systems. The Turkey Point Individual Plant Examination (IPE) concluded that containment survival is almost certain following hydrogen combustion when the Reactor Building Cooling Units and the Reactor Building Spray System are operating.

The underlying purpose of 10 CFR 50.44 is to show that, following a LOCA, an uncontrolled hydrogen-oxygen recombination would not take place, or that the plant could withstand the consequences of uncontrolled hydrogen-oxygen recombination without loss of safety function. Based on the analysis, which includes the staff's evaluation of the risk from hydrogen combustion, resolution of Generic Issue 121, ''Hydrogen Control for PWR [pressurized-water reactor] Dry Containments,'' and the Turkey Point IPE, the plant could withstand the consequences of uncontrolled hydrogen-oxygen recombination without loss of safety function and without credit for the hydrogen recombiners for not only the design basis case, but the more limiting severe accident with up to 100 percent metal-water reaction. Therefore, the requirements for hydrogen recombiners as part of the Turkey Point design basis are unnecessary and their removal from the design basis is justified. Additionally, elimination of the hydrogen recombiners from the Emergency Operating Procedures (EOPs)

would simplify operator actions in the event of an accident and, therefore, would be a safety benefit.

The staff examined the licensee's rationale that supports the exemption request and concluded that the exemption requested for the recombiners and the post-accident containment vent system is justified as stated in the supporting safety evaluation. Additionally, elimination of the hydrogen recombiners and the post-accident containment vent system from the EOPs would be a simplification and a safety benefit. Consequently, pursuant to 10 CFR 50.12(a)(2)(ii), application of the regulation is not necessary to achieve the underlying purpose of the rule.

The safety evaluation may be examined, and/or copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Public Reading Room).

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption pertaining to the recombiners and the post-accident containment vent system is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances are present. Therefore, the Commission hereby grants Florida Power and Light Company an exemption from the requirements for the recombiners and the post-accident containment vent system as stated in 10 CFR 50.44 and 10 CFR part 50, Appendix A, General Design Criteria 41, 42 and 43 for the Turkey Point Plant, Units 3 and 4.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (66 FR 59266).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 12th day of December, 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulations.

[FR Doc. 01–31216 Filed 12–18–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 131st meeting on January 8–10, 2002, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, January 8, 2002

A. *8:30–10:15 A.M.: Opening Statement/Planning and Procedures* (Open)—The Chairman will open the meeting with brief opening remarks. The Committee will then review items under consideration at this meeting and consider topics proposed for future ACNW meetings.

B. *10:30–11:30 A.M.: Proposed Rule on Probability of an Unlikely Event* (Open)—The staff will provide an information briefing on the proposed rule: 10 CFR Part 63, ''Specification of a Probability for Unlikely Features, Events and Processes''.

C. *1–3 P.M.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- ACRS/ACNW November 14, 2001 Joint Subcommittee Meeting on Risk-Informed Regulation in NMSS
- Annual Research Report to the Commission
- Proposed Rule on Probability of an Unlikely Event

D. *3:15–6 p.m.: Discussion of Topics for Meeting with the NRC Commissioners* (Open)—The Committee will discuss topics scheduled for its January 9, 2002 meeting with the Commission.

Wednesday, January 9, 2002

E. *8:30–8:35 A.M.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

F. *8:35–9:30 A.M.: Final Preparation for Committee Meeting with the NRC Commissioners* (Open)—The Committee will finalize preparations for meeting with the NRC Commission.

G. *9:40–11:30 A.M.: Meeting with the NRC Commissioners* (Open)—The Committee will meet with the NRC Commissioners in the Commissioners' Conference Room, One White Flint North, to discuss: Issue Resolution and Sufficiency Review, Total Systems Performance Assessment for Site Recommendation, High-Level Waste Chemistry Issues, Research Program in Radioactive Waste, and related matters.

H. *1–2 P.M.: ACNW Planning Retreat* (Open)—The Committee will finalize plans for its February 27–28—March 1, 2002 retreat.

Thursday, January 10, 2002

I. *8:30–8:35 A.M.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

J. *8:35–11:30 A.M.: Preparation of ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports.

K. *12:30–1:30 P.M.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50461). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8 A.M. and 4 P.M. EST, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or viewing on the internet at *http://www.nrc.gov/ACRSACNW.*

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

The ACNW meeting dates for Calendar Year 2002 are provided below:

ACNW Meeting No. and Meeting Date:
131st (Rockville, MD)—January 8–10 2002
132nd (Rockville, MD)—February 7, 2002
133rd (Rockville, MD)—March 19–21, 2002
134th (Rockville, MD)—April 16–18, 2002
135th (Las Vegas, NV—tentative)—May 21–23, 2002
136th (Rockville, MD)—June 18–20, 2002
137th (Rockville, MD)—July 23–25, 2002
August 2002—No Meeting
138th (Rockville, MD)—September 24–26, 2002
139th (Rockville, MD)—October 22–24, 2002
140th (Rockville, MD)—November 19–21, 2002
December 2002—No meeting

Dated: December 13, 2001.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 01–31213 Filed 12–18–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Materials and Metallurgy; Notice of Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on January 15–16, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, January 15, 2002—8:30 a.m. until the conclusion of business
Wednesday, January 16, 2002—8:30 a.m. until 12:00 Noon

The Subcommittee will review the preliminary results of the Fracture Analysis of Vessels: Oak Ridge (FAVOR) code calculation associated with the Reevaluation of the Technical Basis for the Pressurized Thermal Shock Rule Screening Criterion Project. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7 a.m. and 3:45 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: December 12, 2001.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 01–31214 Filed 12–18–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Privacy Act of 1974; New System of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of New System of Records.

SUMMARY: The Nuclear Regulatory Commission (NRC) is providing notice of the establishment of a new system of records, NRC–12, Child Care Tuition Assistance Program Records.

EFFECTIVE DATE: The new system of records will become effective without further notice on January 28, 2002 unless comments received on or before that date cause a contrary decision.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications staff. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at either the NRC Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or the NRC's Agencywide Documents Access and Management System (ADAMS). Comments are also available at the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* This site also enables you to submit comments. Comments may be uploaded as files (any format), if your Web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, 301–415–5905; e-mail: cag@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Sandra S. Northern, Privacy Program Officer, FOIA/Privacy Act Team, Web, Publishing, and Distribution Services Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6879; e-mail: *ssn@nrc.gov.*

SUPPLEMENTARY INFORMATION: The establishment of this new system of records, NRC–12, Child Care Tuition Assistance Program Records, will allow the NRC to collect and maintain family income data from NRC employees for the purpose of determining their eligibility for child care subsidies, and the amounts of the subsidies. It will also maintain information from the employee's child care provider(s) for verification purposes, e.g., that the provider is licensed. Data will be

collected from the tuition assistance application forms submitted by employees.

A report on the proposed new system of records is being sent to the Office of Management and Budget (OMB), the Committee on Governmental Affairs of the U.S. Senate, and the Committee on Government Reform of the U.S. House of Representatives as required by the Privacy Act and OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals.''

According, the NRC proposes to add NRC–12 to read as follows:

NRC–12

SYSTEM NAME:

Child Care Tuition Assistance Program Records

SYSTEM LOCATION:

Office of Human Resources, NRC, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who voluntarily apply for child care tuition assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include application forms for child care tuition assistance containing personal information, including employee (parent) name, social security number, grade, home and work telephone numbers, home and work addresses, total family income, names of children on whose behalf the parent is applying for tuition assistance, child's date of birth; information on child care providers used, including name, address, provider license number and State where issued, tuition cost, and provider tax identification number; and copies of IRS Form 1040 and 1040A for verification purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 107–67, section 630 and Executive Order 9397.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To the Office of Personnel Management to provide statistical reports;

b. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSITION OF RECORDS IN THE SYSTEM:

STORAGE:

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

RETRIEVABILITY:

Information may be retrieved by employee name or social security number.

SAFEGUARDS:

When not in use by an authorized person, paper records are stored in lockable file cabinets and computer records are protected by the use of passwords.

RETENTION AND DISPOSAL:

The records in this system are currently unscheduled and must be retained until the National Archives and Records Administration (NARA) approves a records disposition schedule for this material.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURE:

Same as ''Notification procedure.''

CONTESTING RECORD PROCEDURE:

Same as ''Notification procedure.''

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from NRC employees who apply for child care tuition assistance. Furnishing of the information is voluntary.

Dated at Rockville, MD, this 13th day of December, 2001.

For the Nuclear Regulatory Commission.

Stuart Reiter,

Chief Information Officer.

[FR Doc. 01–31219 Filed 12–18–01; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45148; File No. SR–CSE–2001–05]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Establishing a Fee Schedule for Nasdaq/National Market Securities Transactions and Establishing a Revenue Sharing Program for Trading in Nasdaq/National Market Securities

December 11, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 29, 2001, the Cincinnati Stock Exchange, Inc. (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CSE.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's rules to establish a fee schedule for transactions in Nasdaq/National Market securities (''Nasdaq/NM Securities'') and to establish a revenue sharing program to reflect recent developments in competitive business strategy. The text of the proposed rule change is available at the principal offices of the CSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The CSE confirmed that the filing received by the Commission on November 29, 2001, file number SR–CSE–2001–05, replaced in its entirety the filing received by the Commission on November 20, 2001, also with the file number SR–CSE–2001–05. Telephone discussion between Jeffrey T. Brown, Vice President, Regulation and General Counsel, CSE, and Christopher B. Stone, Attorney Advisor, Division of Market Regulation, Commission (Dec. 10, 2001).

in Item IV below. CSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing two amendments to the Exchange Rules governing transaction fees and market data revenue credits in keeping with recent trends in the securities industry.

The first amendment adds subsection (2) to CSE Rule 11.10(A)(e), (''Crosses and Meets''). Proposed subsection (2) establishes a fee schedule for transactions in Nasdaq/NM Securities.

The second amendment creates in incentive for CSE members to trade Nasdaq/NM Securities on the Exchange and will be codified as CSE Rule 11.10(A)(l) (''Tape 'C' Transaction Credit''). The Exchange believes the credit is a logical next step in its efforts to provide competitive exchange services to CSE members trading Nasdaq/NM Securities. Under the Nasdaq program,[4] CSE member firms will receive a 75 percent (75%) pro rata transaction credit on all Nasdaq Tape C market data revenue generated by CSE member trading of Nasdaq/NM Securities.

2. Statutory Basis

The proposed rule change is generally consistent with section 6(b) of the Act.[5] The proposed rule change also furthers the objectives of section 6(b)(5) of the Act,[6] particularly, in that it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal also is consistent with section 6(b)(4) of the Act[7] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting CSE members on a pro rata basis.

[4] Nasdaq/NM Securities will be traded on CSE pursuant to section 12(f) of the Act as well as the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq-UTP Plan'').

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(2) thereunder,[9] as establishing or changing a due, fee, or other charge paid solely by members of the CSE. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–2001–05 and should be submitted by January 9, 2002.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–31196 Filed 12–18–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45150; File No. SR–Phlx–2001–110]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Permitting Inactive Nominees To Become Effective Members on December 5, 2001

December 12, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 4, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposed to allow Inactive Nominees,[3] upon request, to act as effective members of the Phlx on Wednesday, December 5, 2001 on the Phlx Equity Trading Floor. The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Inactive Nominees are designated by Phlx member organizations to serve as such. They have been approved by the Phlx for membership in accordance with the Phlx Rules, but will not have the rights and privileges of membership until made effective by the Exchange. *See* Phlx By-law Article XII, Section 12–10 and Phlx Rule 21.

the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the proposed rule change is to allow Inactive Nominees, upon request, to act as effective members of the Phlx on Wednesday, December 5, 2001 on the Phlx Equity Trading Floor. Wednesday, December 5, 2001 is the 6th Annual McNamara Trading Day benefiting St. Jude Children's Research Hospital. McNamara Trading Company, the largest floor brokerage member organization on the Equity Floor, donates all commissions from the day's trading to the St. Jude Children's Research Hospital. The Equity Floor typically experiences a very large increase in volume that day. The Exchange believes that making Inactive Nominees effective members upon their request on that day should better enable the Exchange and its members to maintain fair and orderly markets in securities due to the expected increased volume.[4]

The Phlx has authority to make Inactive Nominees effective members. Phlx By-law Article XII, Sections 12–10(a) and (b) state that an Inactive Nominee is ''an individual * * * approved for membership'' in the Exchange, but ''shall have no rights or privileges of membership unless and until said Inactive Nominee becomes an effective member.'' One way that an Inactive Nominee becomes an effective member is by assuming, pursuant to Phlx Rule 21, legal title to a membership through an intra-firm transfer. This allows an Inactive Nominee to become an effective member of the Exchange through the transfer of a membership from another member, associated with the Inactive Nominee's firm, to the Inactive Nominee. Consequently, the member leaving the membership goes on Inactive Nominee status.

The Exchange now proposes to permit an Inactive Nominee to become an effective member on December 5, 2001 without receiving transfer of membership from the Inactive Nominee's associated member.[5] To become an effective member on that date, an Inactive Nominee need only request to be made an effective member to the Exchange's Membership Services Department.[6] In order to address the anticipated high volume of trading on December 5, 2001, both the Inactive Nominee and the associated member of the Inactive Nominee's firm would be permitted to trade as Exchange members on the Phlx equity trading floor on that date.[7]

(2) Statutory Basis

The Exchange believes that the current proposal should allow the Exchange to continue to maintain fair and orderly markets on the Phlx Equity Floor on Wednesday, December 5, 2001 in light of the expected increase in trading activity that day. As such, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, because it should promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[10] and subparagraph (f)(1) of Rule 19b–4[11] thereunder because it constitutes a stated policy, practice, or interpretation with respect to the administration of Phlx By-law Article XII, Section 12–10(b); namely that Inactive Nominees could, upon request, be made effective members for trading on the Phlx Equity Floor on Wednesday, December 5, 2001. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furthance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2001–110 and should be submitted by January 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–31225 Filed 12–18–01; 8:45 am]

BILLING CODE 8010–01–M

[4] For example, trading volume on November 11, 1999, the 1999 McNamara Trading Day, was over 18.1 million shares, triple Phlx's then average daily volume.

[5] Telephone conversation between John Dayton, Assistant Secretary & Counsel, Phlx, and Steven Johnston, Special Counsel, Division of Market Regulation, Commission, on December 10, 2001 (clarifying effect of proposal on transfer of membership).

[6] Such Inactive Nominees will return to Inactive Nominee status at the close of business on Wednesday, December 5, 2001. In addition, Inactive Nominees may choose to become an effective member pursuant to Phlx Rule 21.

[7] Telephone conversation between John Dayton, Assistant Secretary & Counsel, Phlx, and Steven Johnston, Special Counsel, Division of Market Regulation, Commission, on December 10, 2001 (clarifying combined participation of members and associated Inactive Nominees in trading, as well as purpose of combined participation).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(1).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before January 18, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Loan Application.

No: 1244.

Frequency: On Occasion.

Description of Respondents: Certified Development Companies regulated by SBA.

Responses: 5,200.

Annual Burden: 11,700.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–31204 Filed 12–18–01; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3855]

Office of Visa Services; Notice of Information Collection Under Emergency Review: Form DS–157, Supplemental Nonimmigrant Visa Application

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Supplemental Nonimmigrant Visa Application.

Frequency: Once per respondent.

Form Number: DS–157.

Respondents: All nonimmigrant visa applicants.

Estimated Number of Respondents: 9,600,000.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 9,600,000 hours.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by December 20, 2001. If granted, the emergency approval is valid only for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 60 days from the date that this notice is published in the **Federal Register**. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Eric Cohan of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., Rm L–703, Washington, DC 20520, who may be reached on 202–663–1164.

Dated: December 12, 2001.

Catherine Barry,

Acting Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 01–31356 Filed 12–18–01; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice Number 3831]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee Meeting on Thursday, January 31, 2002, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street, NW, Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the recent activities of American-sponsored overseas schools and the overseas schools regional associations, a presentation on the status of education in the United States and its impact on American-sponsored overseas schools, and selection of projects for the 2002 program.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to January 21, 2002. Each visitor will be asked to provide a date of birth and Social Security number at the time of registration and attendance and must carry a valid photo ID to the meeting. All attendees must use the C Street entrance to the building.

Dated: December 11, 2001.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council, Department of State.

[FR Doc. 01–31265 Filed 12–18–01; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Utah and Wasatch Counties, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Amended Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an additional component, a recreational trail, will be added and the termini changed for the supplement to a final environmental impact statement being prepared for a proposed highway project in Utah and Wasatch Counties, Utah.

FOR FURTHER INFORMATION CONTACT: William R. Gedris, Environmental Coordinator, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, Utah 84118, Telephone: (801) 963–0078 ext, 243; or Brent Schvaneveldt; Utah Department of Transportation, Region 3, 658 North 1500 West, Orem, Utah 84057, Telephone: (801) 222–3406.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation (UDOT), previously issued a Notice of Intent in the **Federal Register** (February 24, 2000: Volume 65, Number 371, Page 9305) to prepare a supplement to the final environmental impact statement (EIS) for a portion of a U.S. Highway 189 from the I–15 Interchange in Orem on the west to Heber City on the east. A recreational trail known as the Provo/Jordan River Parkway, which is a recognized priority in the current Statewide Comprehensive Outdoor Recreational Plan, will now be included in the analysis for the project. Since portions of the highway have been completed and to avoid confusion with another ongoing project in Orem, the highway termini will be changed from the previous designation on the west to the Utah/Wasatch County line (approximately the intersection of U.S. Highway 189 with State Road 92 at Wildwood) and the intersection of U.S. Highway 189 with U.S. Highway 40 approximately 0.8 km (0.5 mile) south of Heber City on the east. The trail termini will extend from Vivian Park on the west (1.9 km [1.2 miles] west of Wildwood) to the Deer Creek Dam (approximately 8 km [5 miles] east of Wildwood) on the east. The purpose of the project is to improve the safety and traffic carrying capacity of the highway by correcting substandard geometrics and other unsafe conditions and to provide a safe, aesthetically appealing extension of the high priority recreational trail with minimal environmental impact.

The trail will extend from its present termini at Vivian Park through the U.S. Highway 189 /Provo River corridor to the vicinity of the Deer Creek Dam utilizing appropriate combinations of abandoned highway, Heber Creeper Railroad right of way, existing local roads and bridges, water aqueduct right of way, and new alignment. Future extension of the trail is planned for the west side of Deer Creek Reservoir to the Soldier Hollow Olympic Venue in Wasatch Mountain State Park and will be addressed in a new environmental document at a later date.

Comments are being solicited from appropriate Federal, State, and local agencies and from private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public scoping and information meeting and a public hearing will be held during the course of the analysis. Public notice will be given of the time and place of the meetings and hearing. The draft SEIS will be available for public and agency review prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and/or questions concerning this proposed action and the EIS should be directed to the FHWA or UDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Issued on: December 13, 2001.

William R. Gedris,

Structural/Environmental Engineer, Salt Lake City, Utah.

[FR Doc. 01–31223 Filed 12–18–01; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 233X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Pike County, KY

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.61-mile line of railroad between milepost LA–0.0 at Leckie Junction and milepost LA–1.61 at Aflex, in Pike County, KY. The line traverses United States Postal Service Zip Code 41501.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic, if there is any, can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 18, 2002, unless stayed pending reconsideration.[1] Petitions to stay that do not involve environmental issues,[2] formal

[1] While the applicant initially indicated a proposed consummation date of January 17, 2002, because the verified notice was filed on November 29, 2001, consummation may not take place prior to January 18, 2002. Applicant's representative has subsequently confirmed that the correct consummation date is on or after January 18, 2002.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any

expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 31, 2001. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 8, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 21, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 19, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: December 10, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–30918 Filed 12–18–01; 8:45 am]

BILLING CODE 4915–00–P

request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 234X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Mingo County, WV

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 2.3-mile line of railroad between milepost TR–0.0 at Thacker and milepost TR–2.3 at Colonel, in Mingo County, WV. The line traverses United States Postal Service Zip Code 25694.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic, if there is any, can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 18, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 31, 2001. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 8, 2002, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 21, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by NSR's filing of a notice of consummation by December 19, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: December 11, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–30992 Filed 12–18–01; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 231X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Fayette County, WV

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a 1.75-mile line of railroad between milepost WL–0.0, at Oak Hill Jct., and milepost WL–1.75, at Oak Hill, in Fayette County, WV (line). The line traverses United States Postal Service Zip Code 25901.

Applicant has certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; (2) any overhead traffic, if there is any, can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government agency acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 18, 2002,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 31, 2001. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 8, 2002, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: James R. Paschall, Esq., Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510. If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed a separate environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 21, 2001. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by December 19, 2002, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our web site at *www.stb.dot.gov.*

Decided: December 11, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–31164 Filed 12–18–01; 8:45 am]

BILLING CODE 4915–00–P

[1] NSR, in its verified notice filed on November 29, 2001, indicated a proposed consummation date of January 16, 2002. However, the earliest possible consummation date, based on the November 29, 2001 filing date, is January 18, 2002. Applicant's representative has confirmed that the correct consummation date is January 18, 2002.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 12, 2001.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 18, 2002 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1628.

Regulation Project Number: REG–118620–97 Final.

Type of Review: Extension.

Title: Communications Excise Tax; Prepaid Telephone Cards.

Description: Carriers must keep certain information documenting their sales of prepaid telephone cards to other carriers to avoid responsibility for collecting tax. The regulations provide rules for the application of the communications excise tax to prepaid telephone cards.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 104.

Estimated Burden Hours Per Respondent/Recordkeeper: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 34 hours.

OMB Number: 1545–1637.

Regulation Project Number: REG–106177–98 Final.

Type of Review: Extension.

Title: Adequate Disclosure of Gifts.

Description: The information requested in regulation section 301.6501(c)–1(f)(2) that must be provided on a gift tax return is necessary to give the IRS a complete and accurate description of the transfer in order to begin the running of the statute of limitations on the gift. Prior to the expiration of the statute of limitations, a gift tax may be assessed and the value may be adjusted in order to determine the value of prior taxable gifts for estate and gift tax purposes.

Respondents: Individuals or households.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1642.

Regulation Project Number: REG–104072–97 Final.

Type of Review: Extension.

Title: Recharacterizing Financing Arrangements Involving Fast-Pay Stock.

Description: Section 1.7701(1)–3 recharacterizes fast-pay arrangements. Certain participants in such arrangements must file a statement that includes the name of the corporation that issued the fast-pay stock, and (to the extent the filing taxpayer knows or has reason to know) the terms of the fast-pay stock, the date on which it was issued, and the names and taxpayer identification numbers of any shareholders of any class of stock that is not traded on an established securities market.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 50 hours.

Clearance Officer: George Freeland, Internal Revenue Service, Room 5577, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 01–31191 Filed 12–18–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0320]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to allow veterans to gain occupancy of property when specified exterior onsite improvements must be postponed because of bad weather.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 19, 2002.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0320'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Escrow Agreement for Postponed Exterior Onsite Improvements, VA Form 26–1849.

OMB Control Number: 2900–0320.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1849 is provided as a service to veterans, builders/sellers, and escrow agents to be used in situations involving escrows. A VA loan amount cannot exceed the reasonable value of the property as determined by the Secretary of Veterans Affairs. The reasonable value is predicated on the completion of all improvements. In certain circumstances, such as adverse weather or other specified unavoidable conditions, the completion of some improvements may have to be postponed. For these situations, VA has developed escrow procedures whereby a builder/seller deposits at least one and one-half times the cost of completing the improvements into an escrow account held by a third party. The funds can only be used for the purpose of finishing the postponed improvements and are released when the improvements have been completed. These escrow procedures provide incentive to builder/sellers to complete all postponed improvements and are standard practices in both the real estate and mortgage lending fields.

Affected Public: Individuals or households and business or other for-profit.

Estimated Annual Burden: 1 hour.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Dated: December 4, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–31227 Filed 12–18–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0394]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 18, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0394.''

SUPPLEMENTARY INFORMATION:

Title: Certification of School Attendance—REPS, VA Form 21–8926.

OMB Control Number: 2900–0394.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8926, Certification of School Attendance—REPS is used to verify that an individual who is receiving restored entitlement program for survivors (REPS) benefits based on schoolchild status is in fact enrolled full-time in an approved school and is otherwise eligible for continued benefits. The program pays VA benefits to certain surviving spouses and children of veterans who died in service prior to August 13, 1981, or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on November 14, 2001, at page 57156.

Affected Public: Individuals or households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0394'' in any correspondence.

Dated: December 6, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–31228 Filed 12–18–01; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 66, No. 244

Wednesday, December 19, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45134; File No. SR–NASD–2001–34]

Self-Regulatory Organizations: Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the Restated Certificate of Incorporation of The Nasdaq Stock Market, Inc.

December 5, 2001.

Correction

In notice document 01–30650 beginning on page 64327 in the issue of Wednesday, December 12, 2001, make the following correction:

On page 64327, in the first column, the Release No. should be as set forth above.

[FR Doc. C1–30650 Filed 12–18–01; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
December 19, 2001

Part II

Department of Transportation

National Highway Traffic Safety Administration
49 CFR Parts 567, 571, 574, and 575
Tire Safety Information; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 571, 574 and 575

[Docket No. NHTSA–01–11157]

RIN 2127–AI32

Tire Safety Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000, this document proposes to establish a new Federal Motor Vehicle Safety Standard that contains provisions to improve the labeling of tires to assist consumers in identifying tires that may be the subject of a safety recall. It also contains proposals for providing other consumer information to increase public awareness of the importance and methods of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. The proposals would apply to all new and retreaded tires for use on vehicles with a gross vehicle weight rating of 10,000 pounds or less and to all vehicles with a gross vehicle weight rating of 10,000 pounds or less, except for motorcycles and low speed vehicles. NHTSA will also be proposing upgraded safety performance requirements for tires in a forthcoming proposal, which would also be included in this new standard.

DATES: Written comments may be submitted to this agency and must be received by February 19, 2002.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System website at http://dms.dot.gov. Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Mr. Roger Kurrus, Office of Planning and Consumer Programs. Telephone: (202) 366–2750. Fax: (202) 493–2290. Mr. Joseph Scott, Office of Crash Avoidance Standards, Telephone: (202) 366–2720. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–20. Telephone: (202) 366–2992. Fax: (202) 366–3820.

All of these persons may be reached at the following address: National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

The agency is proposing to establish a new standard that would contain revisions to the agency's existing tire labeling requirements, as well as contain revisions to its current regulations to improve tire information for light vehicles and light vehicle tires and its availability and understandability to consumers. As used in this document, ''light vehicles'' are vehicles (except motorcycles and low speed vehicles (LSVs)) with a gross vehicle weight rating (GVWR) of 10,000 pounds or less. The new standard will also contain requirements and test procedures addressing various aspects of tire performance. The agency will be issuing a separate NPRM that proposes these performance requirements and procedures. Today's NPRM concerns the labeling and other informational requirements.

Today's proposed amendments address the following aspects of tire and vehicle labeling: Tire markings, the Tire Identification Number (TIN), vehicle placard content and format, placard location, and owner's manual information. The proposal would extend all passenger car labeling requirements, including those requiring the labeling of combined occupant and cargo weight capacity and designated seating positions, to light trucks and multipurpose passenger vehicles (MPVs) with a GVWR or 10,000 pounds or less. The proposal is substantially based on NHTSA's activities undertaken in response to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000, including publication of an ANPRM, consideration of comments in response to the ANPRM, data gathering and analysis, and NHTSA sponsored focus groups.

NHTSA proposes that the TIN, size designation, maximum permissible inflation pressure, and maximum load rating be placed on both sides of light vehicle tires. The Firestone tire recalls last year highlighted the difficulty that

consumers have in determining whether a tire is subject to a recall when the tire is mounted so that the sidewall bearing the TIN and size designation faces inward, i.e., underneath the vehicle. Requiring the TIN and size designation to be on both sides would ensure that that information would be on the sidewall facing outward, regardless of how the tire is mounted. Requiring that the other items of information be on both sidewalls would aid consumers in maintaining their tires and loading their vehicles.

NHTSA is proposing two changes to the TIN. First, the agency proposes to require a re-ordering of information in the TIN so that the first six characters would contain the information required for determining whether a particular tire is subject to a recall. The first two characters would reflect the plant code, and the next four characters would reflect the date code. Second, the agency proposes to require that each character be 6 mm (1/4″) high. The agency believes that a requirement for a uniform TIN font size would significantly improve the readability of the TIN.

The agency proposes four sets of revisions for the presentation of tire inflation pressure and load limit information on the vehicle placard currently required for passenger cars by S4.3 of § 571.110 and to be required for all light vehicles with a GVWR of 10,000 pounds or less under this proposal.[1] This placard, permanently affixed to the glove compartment door or an equally accessible location, currently displays the vehicle capacity weight, the designated seating capacity (expressed in terms of total number of occupants and in terms of occupants for each seat location), the vehicle manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight, and the manufacturer's recommended tire size designation.

First, the agency proposes that tire inflation pressure information would be visually separated by a red colored border on the vehicle placard or, alternatively, be placed on a separate tire inflation pressure label. The vehicle placard would contain only the information required by the proposed information specified in the proposed version of S4.3 (paragraphs (a)–(e)).[2] This information would not be combined with other labeling or certification requirements. The vehicle placard would also meet the proposed color and content requirements as discussed below.

Second, the agency also proposes that the tire inflation pressure label and vehicle placard meet the following three requirements: (1) The tire inflation pressure information on the placards would be in color—red, yellow, and black on a white background, (2) contain a black and white tire symbol icon in the upper left corner of the placards, 13 millimeters (.51 inches) wide and 14 millimeters (.55 inches), and (3) the placard and label would both include the phrases ''Tire Information'' and ''See Owner's Manual For Additional Information'' in yellow text on a black background.

Third, the agency proposes to replace the vehicle capacity weight statement on the vehicle placard with the following sentence: ''[t]he combined weight of occupants and cargo should never exceed XXX pounds.'' The ''XXX'' amount would equal the ''vehicle capacity weight'' of the vehicle as defined in FMVSS No. 110. The information is the same as that currently required to be placed on the vehicle placard by manufacturers. However, the agency believes that the statement ''the combined weight of occupants and cargo should never exceed * * *'' is easier for consumers to comprehend than a technical phrase such as ''vehicle capacity weight.'' ''Vehicle capacity weight'' is not intuitive to consumers and it requires a vehicle operator to look to the owner's manual or standard to understand which factors are included in the calculation of the sum/amount on the placard.

Fourth, the agency proposes to replace the vehicle's recommended tire size designation with the tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer. While in most instances these two numbers would be identical, this minor revision insures that the consumer is provided with the correct tire inflation pressure information for the tire size actually installed on his vehicle as original equipment by the manufacturer.

We are proposing these placard changes in response to survey data which indicate that consumers need assistance in locating recommended tire pressures for their vehicle's tires and understanding load limits. The use of colors and a visual cue, such as a tire symbol icon, would aid drivers in noticing and locating this imperative information. By expressing the vehicle's load limit in easily recognizable terms such as ''passenger and cargo weight'', as opposed to ''vehicle capacity weight'' the proposed placard revisions would also aid consumers in understanding and adhering to load limit guidelines.

The agency proposes that the placard and/or label containing tire inflation pressure by tire size and other required information specified in S4.3 of FMVSS No. 110 be located on the driver's side B-pillar. If a vehicle does not have a B-pillar, then the placard and/or label would be placed on the edge of the driver's door. Currently, S4.3 of 571.110 specifies that the vehicle placard be affixed to the glove compartment door or an equally accessible location. A standardized location for tire information placards and labels would contribute to consumer awareness of recommended tire inflation pressures and load limits.

The agency proposes that owner's manuals for light vehicles contain discussion of the following five subject areas: (1) Tire labeling, (2) recommended tire inflation pressure, (3) glossary of tire terminology, (4) tire care, and (5) vehicle load limits. A single, reliable source containing the proposed required information for the tires and tire safety information listed above would aid consumers by providing to them, in one centralized location, the information that they need to properly maintain their tires and adhere to recommended load limits.

Finally, the agency proposes revising FMVSS Nos. 110, Tire selection and rims, for passenger cars, 49 CFR 571.110, and 120 Tire selection and rims for motor vehicles other than passenger cars, 49 CFR 571.120, to reflect the applicability of the proposed light vehicle tire standard to vehicles with a GVWR of 10,000 pounds or less, and revising FMVSS Nos. 117, Retreaded pneumatic tires, 49 CFR 571.117, and 129, New non-pneumatic tires for passenger cars, 49 CFR 571.129, to replace the labeling requirements contained therein with those specified in the proposed new light vehicle tire standard.

[1] FMVSS No. 120 currently requires that each motor vehicle other than a passenger car show, on the label required by § 567.4, or on a tire information label (S5.3.2(b)), the recommended tire size designation appropriate for the GAWR, the tire size and type designation of rims appropriate for those tires, and the recommended cold inflation pressure for those tires such that the sum of the load ratings on the tires on each axle (when the tire's load carrying capacity at the specified pressure is reduced by dividing 1.10, in the case of a tire subject to FMVSS No. 109, i.e., a passenger car tire) is appropriate for the GAWR.

[2] (a) Vehicle capacity weight expressed as ''THE COMBINED WEIGHT OF OCCUPANTS AND CARGO SHOULD NEVER EXCEED XXX POUNDS'';

(b) Designated seating capacity (expressed in terms of total number of occupants and in terms of occupant for each seat location);

(c) Vehicle manufacturer's recommended cold tire inflation pressure;

(d) Tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer; and

(e) ''SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION'.

NHTSA believes that this proposal would result in minimal costs for tire and manufacturers. NHTSA estimates that the added cost for labeling tires under this proposal would equal $0.01 per tire or less. Vehicle labeling, including vehicle placards for passenger cars and owner's manual information for light vehicles, is already required. Therefore the cost of labeling the tire, printing new or revised placards and/or tire inflation labels, the owner's manual pages and installation of the placard and/or tire inflation pressure label should be minimal. The only costs would be one-time costs to change production for the new vehicle placard and/or tire inflation pressure label, the application of the vehicle placard and/or tire inflation pressure label to all light vehicles, not only passenger cars, and the new owner's manual pages. NHTSA estimates that, adding the total tire and vehicle manufacturing costs together, the total annual costs equal approximately $5.5 million.

NHTSA believes that this proposal would be effective in increasing public awareness of tire safety, particularly the understanding and maintenance of proper tire inflation and load limits. This proposal will also enable consumers to more easily identify the TIN and other tire information for recalls and other notifications. The proposal will standardize the location and content of important information relating to proper inflation and load limits and other tire safety concerns. These measures, by increasing consumer knowledge and awareness, should result in reduced tire failures and tire related crashes, and therefore fewer deaths and injuries.

II. Background

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000, Pub. L. 106–414, requires the agency to address numerous matters through rulemaking. One of these matters, set forth in section 11 of the Act, is the improvement of the labeling of tires required by section 30123 of title 49, United States Code, to assist consumers in identifying tires that may be the subject of a recall. Section 11 provides that the agency must initiate a rulemaking proceeding for that purpose within 30 days after the enactment of the Act and must complete it not later than June 1, 2002.

Additionally, that section provides that the agency may take whatever additional action it deems appropriate to ensure that the public is aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. Section 11 states that such additional action may, for example, include a requirement that the manufacturer of motor vehicles provide the purchasers of the motor vehicles information on appropriate tire inflation levels and load limits if the agency determines that requiring such manufacturers to provide that information is the most appropriate way that information can be provided.

On December 1, 2000, this agency published an Advance Notice of Proposed Rulemaking (ANPRM) (65 FR 75222), as required by the TREAD Act, announcing our plans to (1) improve the labeling of tires, (2) assist consumers in identifying tires that may be the subject of a recall, and (3) ensure that the public is aware of the importance of observing motor vehicle tire load limits and maintaining proper tire inflation levels for the safe operation of a motor vehicle. Specifically, we discussed tire label requirements and prior rulemakings, as well as presented a number of questions for public comment on issues such as general consumer knowledge and behavior, availability of information to consumers, and Tire Identification Number (TIN) information and location.

III. Existing Labeling Requirements

A. Generally

NHTSA's existing labeling requirements for new passenger car tires are set forth in Federal Motor Vehicle Safety Standard (FMVSS) No. 109, New Pneumatic Tires—Passenger Cars (49 CFR 571.109). Specifically, section S4.3 of FMVSS No. 109 sets forth information labeling requirements for tires, including requirements regarding the positioning of the information on the sidewall to ensure that it is readily visible and to minimize the possibility that it will be scuffed off if the sidewall hits a curb or similar object. It provides that the information listed in paragraphs S4.3 (a) through (e) (e.g., number of plies and maximum permissible inflation pressure) must appear, on at least one sidewall, in an area between the maximum section width and the bead of the tire, unless the maximum section width of the tire falls between the bead and one-fourth of the distance from the bead to the shoulder of the tire. For tires for which the maximum section width falls in that area, all required labeling must be located between the bead and a point one-half the distance from the bead to the shoulder of the tire.[3] Section S4.3.1 and S4.3.2 provide more extensive location requirements for other information (e.g., the DOT certification and the name of the manufacturer or brand name and number assigned to the manufacturer) to be placed on car tires. They provide that the labeling must be done in the manner specified in Part 574.5.

NHTSA's labeling requirement for retreaded passenger car tires is set forth in FMVSS No. 117, Pneumatic Retreaded Tires (49 CFR 571.117). FMVSS No. 117 requires that each newly retreaded passenger car tire have molded into its sidewalls information similar to that required in FMVSS No.109, plus the words bias, or bias belted, or radial, as applicable. FMVSS No. 117 does not, though, require that the name of the manufacturer or brand name and number assigned to the manufacturer be placed on retreaded tires as is required on new passenger vehicle tires by FMVSS No. 109.

NHTSA's labeling requirements for new tires for vehicles other than passenger cars are set forth in FMVSS No. 119, New Pneumatic Tires for Vehicles other than Passenger Cars (49 CFR § 571.119). Paragraph S6.5 of FMVSS No. 119 specifies that all tires for vehicles other than passenger cars must have certain markings on the sidewalls. Among other things, these tires must show the actual number of plies in the tire, the composition of the ply cord material (S6.5(f)), and a letter designating the load range (S6.5(j)). S6.5 also provides that the designated information must appear, on at least one sidewall, in an area between the maximum section width and bead of the tire, unless the maximum section width of the tire falls between the bead and one-fourth of the distance from the bead

[3] The agency initially addressed the problem of labeling tires whose maximum section width is close to the bead in a 1985 rulemaking regarding tires for vehicles other than passenger cars. (49 FR 37816; September 26, 1984 and 50 FR 10773; March 18, 1985). That rulemaking amended part 574, Tire Identification and Recordkeeping (49 CFR 574.4) and FMVSS No. 119, New Pneumatic Tires for Motor Vehicles Other Than Passenger Cars (49 CFR 571.119) to permit placing markings at a different location in order to permit the introduction of a new tire concept for vehicles other than cars where the tire's maximum section width is at the bead. In particular, Figure 1 of part 574 was amended to specify the requirements for the label's position if a tire's maximum section width falls within one-fourth of the distance from the bead to the tire shoulder. In that case, a marking must appear between the bead and a point one half the distance from the bead to the shoulder of the tire. Amending part 574 had the practical effect of applying the new requirement to section S4.3.1 and S4.3.2 of FMVSS No. 109, given that these provisions state that the tires must be labeled ''in the manner specified in part 574.'' However, the 1985 final rule did not amend the labeling requirements for car tires in section S4.3 of FMVSS No. 109. Nevertheless, the notice did expressly amend section S6.5 of FMVSS No. 119. A subsequent rulemaking (55 FR 41190; October 10, 1990) amended FMVSS No. 109 to facilitate the use of this new tire technology.

to the shoulder of the tire. For tires for which the maximum section width falls in that area, all required labeling must be located between the bead and a point one-half the distance from the bead to the shoulder of the tire. Additionally, section S6.5(b) requires that each tire be marked with the tire identification required by part 574 of this chapter and that this number may be marked on only one sidewall.

NHTSA's labeling requirements for new temporary spare non-pneumatic tires for passenger cars are set forth in FMVSS No. 129, New non-pneumatic tires for passenger cars (49 CFR 571.129). The FMVSS No. 129 labeling requirements are similar to those set forth in section S4.3 in FMVSS No. 109 for size designation, load, rating, rim size and type designation, manufacturer or brand name, certification, and tire identification number. The standard also includes temporary use and maximum speed labeling requirements (which provide an extra margin of safety relating to the handling and braking of these tires) and allows methods of permanent marking other than ''molding'' in anticipation of the difficulty of molding required information on non-pneumatic tire designs. Paragraph S.4 of FMVSS No. 129 specifies that each non-pneumatic tire must have certain markings on the sidewalls including the non-pneumatic tire identification code (NPTIC), the load rating, and the tire identification number required in Part 574. These labeling requirements also specify that the labeling information must appear on both sides of the tire, except, in the case of a tire that has a particular side that must always face outward where the information must appear on the outward facing side.

B. Tire Identification Number (TIN)

Section 574.5 of Title 49, CFR, Tire Identification Requirements, sets forth the methods by which new tire manufacturers and new tire brand name owners must identify tires for use on motor vehicles.[4] The section also sets forth the methods by which tire retreaders and retreaded tire brand name owners must identify tires for use on motor vehicles. The purpose of these requirements is to facilitate efforts by tire manufacturers to notify purchasers of defective or nonconforming tires and by such purchasers to identify those tires so that purchasers can take appropriate action in the interest of motor vehicle safety.[5]

Specifically, 574.5 requires each new tire manufacturer and each tire retreader to mold a TIN into or onto the sidewall of each tire produced, in the manner and location specified in the section and as depicted in Figures 1 and 2 of that section. The TIN is composed of four groups:

1. The first group represents the manufacturer's identification mark assigned to such manufacturer by this agency in accordance with § 574.6;

2. The second group represents the tire size for new tires; for retreaded tires, the second group represents the retread matrix in which the tire was processed or, if no matrix was used, a tire size code;

3. The third group may, at the option of the manufacturer, be used as a descriptive code for identifying significant characteristics of the tire. If the tire is produced for a brand name owner, the third grouping must identify such brand name owner; and

4. The fourth group identifies the week and year of manufacture. The first two figures identify the week, starting with ''01'' to represent the first full week of the calendar year; the second two figures represent the year. For example, ''2198'' represents the 21st week of 1998.[6]

C. Other Labeling

Labeling requirements are also contained in 49 CFR part 567, Certification, 49 CFR part 575, Consumer Information Regulations, FMVSS No. 110, Tire Selection and Rims, applicable to passenger cars and to non-pneumatic spare tire assemblies for use on passenger cars, and FMVSS No. 120, Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars.

Section 567.4 requires vehicle manufacturers to affix to each vehicle a label bearing, among other things, the Gross Vehicle Weight Rating (GVWR), which must not be less than the sum of the unloaded vehicle weight, rated cargo load, and 150 pounds times the vehicles

[4] NHTSA originally proposed these requirements in response to the May 22, 1970 amendments to the National Traffic and Motor Vehicle Safety Act of 1966, Pub. L. 89–563, originally 15 U.S.C. 1581 *et seq.* (Codified in 1995 and now found at 49 U.S.C. 30101 *et seq.*). Those amendments, among other things, required manufacturers and brand name owners of new and retreaded motor vehicle tires to maintain records of the names and addresses of the first purchasers of tires (other than dealers or distributors) in order to facilitate notification of such purchasers in the event tires were found to be defective or not to comply with applicable Federal motor vehicle safety standards.

[5] The agency believed that an effective method of tire identification was essential to an effective defect or noncompliance notification system for tire owners. Accordingly, on July 23, 1970, NHTSA published a Notice of Proposed Rulemaking (NPRM) (35 FR 11800) proposing to establish a tire identification system to provide a means to identify the manufacturer of the tire, the date of manufacture, the tire size, and, at the option of the manufacturer, additional information to further describe the type or other significant characteristics of the tire. The agency proposed a TIN composed of four groups of figures: the first group would contain the manufacturer's identification mark which would be assigned by NHTSA; the second group would identify the tire size; the third group would identify the date of manufacture of the tire; and the fourth group would be the manufacturer's optional description of the tire. The figures would be a minimum of ¼ inch high and would appear on both sidewalls of the tire.

In a final rule published on November 10, 1970 (35 FR 17257), the agency revised the requirements proposed in the NPRM in response to the suggestions of various commenters. Specifically, NHTSA reversed the order of the manufacturer's optional information and the date of manufacture, so that the latter would appear in the fourth grouping and the manufacturer's optional information would appear in the third grouping. NHTSA also stated that the tire identification number need only appear on one sidewall in response to concerns relating to worker safety, and that the figures need only be 5⁄32 inch high on tires with a bead diameter of less than 13 inches. Many commenters requested that the date code be expressed in alpha-numeric form in order to reduce the date figures to two digits. NHTSA declined to adopt the alpha-numeric system because it could be confusing to the public and because retreaders may not be able to easily determine the age of the casing to be retreaded. In order to shorten the stencil plate, however, NHTSA dropped one of the two digits representing the decade of manufacture, thereby reducing the date of manufacture group from four digits to three. The date of manufacture grouping was later expanded to four digits. (64 FR 36807; July 8, 1999)

[6] In response to petitions for a rulemaking, the agency amended NHTSA's tire identification and recordkeeping regulation in 1999 to require the date of manufacture to be expressed in four digits, instead of the previously required three, so that consumers would be able to determine the decade of manufacture of their tires. (64 FR 36807; July 8, 1999) This rule also reduced the minimum size of the digits from the then currently required minimum of 6 millimeters (mm) (¼ inch) to 4 mm (5⁄32 inch) to relieve the manufacturers and retreaders of the burden they might otherwise have incurred by having to redesign their tire molds to accommodate the additional digit.

In that rulemaking, all commenters supported adding a fourth digit to the date code. Two of the commenters, though, opposed reducing the size of the numbers in the TIN on the basis that such reduction would make it more difficult for consumers to see, especially those with visual pathologies. These commenters did not, however, provide any data showing that drivers cannot read 4 mm figures. NHTSA said that its experience to date with 4 mm figures on tires suggest that figures of that size do not present a problem. (It should be noted that many tire manufacturers actually use figures larger than 4 mm for the date code. As discussed in the final rule, 4 mm is approximately the equivalent of font size 16 in Windows 95, which is approximately double the font size used in the **Federal Register** and also approximately double the size of the largest letters found on the U.S. quarters being minted then. Additionally, this agency pointed out that the size of the UTQGS tire grades marked on tire sidewalls has always been 4 mm (5⁄32 inch) and the agency had not received any complaints that those letters or numbers were too small to read. Finally, Part 574 permits tires of less than 13 inches in diameter or those that have less than a 6-inch cross section width to have a letter/number size of 4 mm. Again, the agency had not received any complaints about the size of those letters/numbers.

rated seating capacity; and the Gross Axle Weight Rating (GAWR), which is the value specified by the manufacturer as the load carrying capacity of a single axle system.

Section 30123(e) of Title 49, U.S. Code, requires the Secretary of Transportation to prescribe a uniform quality grading system for motor vehicle tires to help consumers make an informed choice when purchasing tires. NHTSA implemented this statutory mandate by issuing the Uniform Tire Quality Grading System (UTQGS) at 49 CFR 575.104, applicable to new passenger car tires. The UTQGS require passenger car and tire manufacturers and tire brand name owners to provide consumers with information with respect to the treadwear,[7] traction,[8] and temperature resistance [9] performance of their tires. UTQGS information is required to be provided on two locations on the tire: a paper label affixed to the tread, and molded into the sidewalls. Excluded from the UTQGS are deep-tread, winter-type snow tires, space-saver or temporary-use spare tires, tires with nominal rim diameters of 12 inches or less and limited production tires as described in 49 CFR 575.104(c)(2).

Section 575.6(a) of Title 49, CFR, requires that when a motor vehicle is delivered to the first purchaser for purposes other than resale, the vehicle manufacturer must provide, in writing and in the English language, the information specified in Section 575.103 applicable to that vehicle, and in the owner's manual, the information specified in Section 575.104.[10] Section 575.104(d)(1)(iii) requires vehicle manufacturers to list all possible grades for traction and temperature resistance and restate verbatim the explanation of each of the three graded aspects of performance. The information must also contain a statement referring the reader to the tire sidewall for the specific graded performance of the tires with which the vehicle is equipped. Section 575.6(c) requires that each vehicle manufacturer, brand name owner of tires, and manufacturer of tires for which there is no brand name owner to provide the information specified in subpart B of Part 575 to prospective purchasers at each location at which its vehicles or tires are offered for sale.

Paragraph S4.3 of FMVSS No. 110 requires manufacturers to affix a placard to each passenger car's glove compartment door or an equally accessible location showing the vehicle's capacity weight, designated seating capacity, the manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight, the manufacturer's recommended tire size designation, and, for a vehicle equipped with a non-pneumatic spare tire assembly, the non-pneumatic identification code required by FMVSS No. 129, New Non-Pneumatic Tires for Passenger Cars. The required information is intended to promote the vehicle's safe performance by preventing overloading of the tires or the vehicle itself.[11]

FMVSS No. 120 requires that each vehicle show, on the label required by 567.4, or on a tire information label (S5.3.2(b)), the recommended tire size designation appropriate for the GAWR, the size and type designation of rims appropriate for those tires, and the recommended cold inflation pressure for those tires such that the sum of the load ratings of the tires on each axle (when the tires load carrying capacity at the specified pressure is reduced by dividing 1.10, in the case of a tire subject to FMVSS No. 109, i.e., a passenger car tire) is appropriate for the GAWR.[12]

IV. Current Safety Problem—Inadequacy of Existing Labeling Requirements

A. Difficulty Locating the TIN

The continued use of tires determined to be unsafe poses a safety risk not only for the occupants of the vehicles equipped with those tires, but also for other highway users near those vehicles.

One effect of the combination of the prevalence of long-life radial tires is that tires have significantly longer service life now than 20 years ago. Another effect of radials is that there are large numbers of persons who purchase a used car with used radial tires. Unlike the case of first purchasers, there is no procedure for providing tire manufacturers with the names and addresses of subsequent purchasers. Thus there is no way for the tire manufacturers to directly contact subsequent purchasers in the event of a recall. The only way that either of these groups could determine that their tires

[7] The treadwear grade is a comparative rating based on the wear rate of the tire when tested under controlled conditions. For example, a tire graded 200 should have its useful tread last twice as long as a tire graded 100.

[8] Traction grades represent the tire's ability to stop on wet pavement as measured under controlled conditions on asphalt and concrete test surfaces. The traction grades from highest to lowest, are ''AA'', ''A'', ''B'' and ''C''. A tire graded ''AA'' may have relatively better traction performance than a tire graded ''A'', ''B'' or ''C'', based on straight ahead braking tests. The grades do not reflect the cornering or turning traction performance of the tires.

[9] Temperature grades represent the tire's resistance to heat and its ability to dissipate heat when tested under controlled laboratory conditions. Sustained high temperature can cause the tire to degenerate and reduce tire life, and excessive temperature can lead to sudden tire failure. The temperature grades from highest to lowest are ''A'', ''B'' and ''C''. The grade ''C'' corresponds to the minimum performance required by FMVSS No. 109. The temperature grade is for a tire that is inflated properly and not overloaded.

[10] Prior to May 24, 1999 (64 FR 27921), passenger car manufacturers were required to directly provide general UTQGS information and the information specified in Section 575.104 in writing and the English language to purchasers and potential purchasers at the point of sale of new vehicles. The agency eliminated this requirement, instead requiring that the information be contained within the owner's manual, because it believed that the elimination of the point-of-sale requirement would relieve a significant burden on vehicle manufacturers and dealers and yet would have little effect on consumers. (64 FR 27921; May 24, 1999).

[11] Herzlich Consulting (Herzlich) petitioned the agency on March 12, 1992, to amend FMVSS Nos. 110 and 120 to include a requirement that the manufacturers of the vehicles subject to those standards place a warning in the glove compartment or some other accessible/visible location which would state, in high visibility letters: ''Warning: Underinflation, Overloading, or Damage can Cause any Tire to Fail Suddenly.'' In support of the petition, Herzlich argued that although the Federal and state governments and the tire industry continuously communicate tire safety information, such efforts are ''rather unsuccessful.'' Herzlich also argued that tire failure due to road hazard damage, underinflation, or overload continues to be a problem. He stated that tires are the most important safety component on the vehicle and, perhaps because of their high degree of reliability, they are often taken for granted by consumers. Herzlich also referred to unspecified surveys purporting to show that a ''significant number of vehicles are running on underinflated, overloaded, worn-out or damaged tires,'' which, he contended, indicates that people get careless and need to be reminded over and over again to inspect and properly maintain their tires.

After a full and careful review of the petition, NHTSA decided to deny it based on several factors (57 FR 45759; October 5, 1992). First, there already existed a vast amount of information on proper tire maintenance. Additionally, the agency stated that there was no reason to believe that requiring the same information be made available in another place would increase consumer's responsiveness to such information. Finally, the petitioner presented no data, and this agency was aware of none, that would support petitioner's assertion that improper maintenance causes the vast majority of tire failures or that a significant number of vehicles are running on underinflated, overloaded, worn out or damaged tires.

In summary, NHTSA believed at that time that the wealth of safety materials already available to the public through industry, government, and consumer sources adequately addressed the issue of proper tire inflation and maintenance; that existing labeling requirements provided sufficient information to enable consumers to maintain tires properly and safely; and that the petitioner had not shown that the amendments he proposed would significantly change the behavior of the public in that respect.

[12] In a final rule published on March 11, 1993 (58 FR 13424), the agency amended FMVSS No. 120 to clarify the requirement about tire information labels on multipurpose passenger vehicles, trucks, buses, and trailers. Specifically, this amendment required the label to specify a recommended tire inflation pressure when such vehicles are equipped with passenger car tires.

have been recalled would be to find the identification numbers on their tires and compare them with the series of identification numbers contained in general public announcements about the recall.

As a result of the difficulty and inconvenience of checking the TINs, the percentage of people who respond to a tire recall campaign is reduced and motorists unknowingly continue to drive their vehicles with potentially unsafe tires.

The side of a tire bearing the TIN is often mounted so that it faces inward. In the case of whitewall tires, this occurs because the TIN is almost always molded on the blackwall (i.e., inside sidewall) of the tire. Whitewall tires account for a small and declining percentage (currently about 5 percent or less) of original equipment tire sales in this country, but about 40 percent of replacement tires. There are about three times as many replacement tires as original equipment tires sold each year. Blackwall tires, which have the TIN on one sidewall, are as likely to be mounted with the number side facing in as out. Based on this information, we estimate that approximately 65 percent of all tires are mounted with their TINs not readily visible.

When the TINs appear on the inside sidewalls of the tires mounted on vehicles, motorists have three inconvenient ways of finding and recording the TINs. They must either: (1) Slide under the vehicle with a flashlight, pencil and paper and search the inside sidewalls for the TINs; (2) remove each tire, find and record the TIN, and then replace the tire; or (3) enlist the aid of a garage or service station which can perform option 1 or place the vehicle on a vehicle lift so that the TINs can be found and recorded.

B. Lack of Consumer Knowledge Concerning Correct Tire inflation Pressure

Maintaining proper inflation pressure in motor vehicle tires is important to the safe and efficient use of motor vehicles.

The recommended inflation pressure is labeled on the vehicle on a placard or the vehicle certification label by the vehicle manufacturer to provide the cold tire inflation pressure for the maximum loaded vehicle weight based upon vehicle specification and operation as determined by the vehicle manufacturer. The recommended inflation pressure is often confused with the maximum inflation pressure which is labeled on the tire by the tire manufacturer to provide the maximum cold inflation pressure to which a tire may be inflated based upon the maximum load rating for that tire.

Maintaining tires at their proper inflation pressure, instead of allowing them to become underinflated, reduces heat build up, minimizes tire wear, contributes to good vehicle handling and improves fuel economy through decreasing the rolling resistance of the tires. In light of the trend toward self-service gas stations, the motorist's responsibility for maintaining proper inflation pressure is more significant. Unfortunately, surveys indicate that a significant number of vehicles are being operated with underinflated, overloaded and/or damaged tires and that the public needs to be reminded to inspect and properly maintain their tires.

The 2000 Bureau of Transportation Statistics (BTS) Omnibus Survey, conducted in September 2000, contained four questions on the public's knowledge of tire pressure issues. This survey, which contained 1,017 household interviews, indicated that, among other things, at least 54.7 percent of the respondents do not know how to determine the proper pressure for their tires.

The AAA Tire Safety Survey, based on an omnibus nationwide telephone survey of 1070 adult Americans (539 males and 531 females) who drive a car, motorcycle, or other motor vehicle at least once a week, queried participants on how to identify the correct tire pressure.[13] The survey indicated that, despite a consciousness about checking tire pressure (82% surveyed said they checked their tire pressure at least every three months and 48% said they checked their tire pressure at least once a month), American drivers lack sufficient knowledge about how to determine optimum tire pressure. About half (48%) consult the tire sidewall, and fewer check more reliable methods such as the owner's manual (27%) or the vehicle placard (18%).

The Rubber Manufacturers Association (RMA) survey, based on four hundred 11-minute telephone interviews conducted between October 12 and 19, 2000, with consumers who own or lease a vehicle they drive at least once a week and are responsible for making decisions about the routine maintenance of their vehicle, explored the extent to which consumers are aware of and knowledgeable about tire safety.[14] To assess tire maintenance knowledge, drivers were asked 16 questions related to properly maintaining automotive tires. Of these questions pertaining to tire labeling, drivers were asked to name the best sources for the recommended tire pressure. In response, forty-five percent of drivers responded correctly to this question by saying the owner's manual or decals on the inside of the vehicle's door or glove box. Twenty-seven percent responded incorrectly by reporting that the best source for the recommended tire pressure was on the sidewall of the tire, 7% volunteered ''tire manufacturer information'' in general, and 12% said something else. Only 10% said they ''did not know.''

In Spring 2001, the National Center for Statistics and Analysis (NCSA) conducted the 2001 National Automotive Sampling System (NASS) Tire Pressure Special Study (NASS Study) in response to the TREAD Act.[15] *The Preliminary Analysis of Findings, 2001 NASS Tire Pressure Special Study*, dated May 4, 2001, has been placed in the NHTSA Docket No. NHTSA–2000–8572. The NASS Study was designed to assess, among other factors, the extent to which passenger vehicle operators are aware of the recommended air pressure for their tires.

During a total of 336 visits to gas stations, a NASS team collected survey data from drivers from each of the following vehicle categories: passenger cars; sport utility vehicles; vans; and pickup trucks. A total of 11,350 vehicle drivers were surveyed about their knowledge of the vehicle manufacturers recommended tire pressure.[16] Survey data were analyzed for the following three categories of vehicles: (1) Passenger cars with metric P-type tires; (2) Trucks, sport utility vehicles (SUVs), and Vans with metric P-type tires, and (3) Trucks, SUVs, and Vans with either metric LT-type or high flotation tires. The drivers, asked how they determine at what pressure to set their tires, answered as follows:

[13] Tire Safety Survey, prepared for AAA Foundation for Traffic Safety, by Roper Starch Worldwide, Inc., March 22, 1999. Interviews were conducted between March 10, 1999 and 14, 1999.

[14] Consumer Tire Maintenance and Safety Awareness Research, A Report to Rubber Manufacturers Association, by Fleishman-Hillard Research, October 2000.

[15] Data was collected through the infrastructure of the National Accident Sampling System—Crashworthiness Data System (NASS–CDS). The NASS–CDS consists of 24 Primary Sampling Units (PSUs) located across the country. Within each PSU, a random selection of zip codes was obtained from a list of eligible zip codes. Within each zip code, a random selection of two gas stations was obtained.

[16] This total was comprised of 5,442 passenger cars, 1,874 SUVs, 1,376 vans, and 1,838 pickup trucks.

How drivers determine at what pressure to set their tires	Percent		
	Passenger car P-metric tires	Trucks, SUVs and Vans	
		P-metric tires	LT or high flotation tires
Owner's Manual	17.84	14.8	21.9
Vehicle Placard	8.39	7.06	10.84
Tire Labeling	21.56	31.47	44.35
Visually	10.68	8.23	6.83
Other	9.75	9.56	9.89
Does not Know	6.87	4.31	2.02
Other person maintains	23.8	23.07	4.11
Unknown	1.1	1.51	0.06

This data indicates that only about 26 (17.84 + 8.39) percent of drivers of passenger cars, 22 (14.8 + 7.06) percent of drivers of pick-up trucks, SUVS, and vans with P-metric tires, and 32 (21.9 + 10.84) percent of drivers of pick-up trucks, SUVs, and vans with either LT or flotation tires know how to consult either the vehicle placard or the owner's manual to determine the correct inflation pressure for their vehicles' tires.

C. Safety Problems Associated With Tires

Tire under-inflation, high ambient temperatures, and vehicle overloading are among the factors being considered in the ongoing evaluation of the radial tire failures that have occurred in recent years which have been associated with rollover and other crashes. For example, when a tire is used while significantly under-inflated, its sidewalls flex more and the air temperature inside it increases, making the tire more prone to failure. In addition, a significantly under-inflated tire loses lateral traction, making handling more difficult. The agency also has received data from Goodyear indicating that significantly under-inflated tires increase a vehicle's stopping distance on wet surfaces.

NHTSA's crash files do not contain any direct evidence that points to low tire pressure as the cause of any particular crash. However, this lack of data does not imply that low tire pressure does not cause or contribute to any crashes. It simply reflects the fact that measurements of tire pressure are not among the vehicle information included in the crash reports received by the agency and placed in its crash data bases.[17]

The only tire-related data element in the agency's data bases is ''flat tire or blowout.'' Even in crashes for which a flat tire or blowout is reported, crash investigators cannot tell whether low tire pressure contributed to the tire failure.

Under-inflated tires can contribute to other types of crashes than those resulting from blow outs or tire failure, including crashes which result from: an increase in stopping distance; skidding and/or a loss of control of the vehicle in a curve or in a lane change maneuver; or hydroplaning on a wet surface. However, the agency does not have any data on how often under-inflated tires cause crashes or contribute to their occurrence.

Additionally, under-inflation contributes to tire overload. Tire overload describes a condition in which the vehicle is carrying more weight than the tire is rated to carry at a specified inflation pressure. For instance, for every 1-psi reduction in inflation pressure, a vehicle's tires suffer a 1.6% reduction in vehicle capacity weight (passenger plus cargo capacity). Overloading can result in handling or steering problems, brake failure, and tire failure.

Several crash files contain information on ''general'' tire related problems that precipitate crashes. The more recent of these files are The National Automotive Sampling System—Crashworthiness Data System (NASS–CDS)[18] and the Fatality Analysis Reporting System (FARS).[19]

NASS–CDS data for 1995 through 1998 indicate that there are an estimated 23,464 tow-away crashes caused per year by blowouts or flat tires.

ESTIMATED ANNUAL AVERAGE NUMBER (1995–98 NASS) AND RATES OF BLOWOUTS OR FLAT TIRES CAUSING TOW-AWAY CRASHES

	Tire related cases	Percent tire related
Passenger Cars Total	10,169	0.31
Rollover	1,837 (18%)	1.87
Non-rollover	8,332 (82%)	0.26
*Light Trucks Total**	13,294	0.99
Rollover	9,577 (72%)	6.88

[17] These crash databases are the National Automotive Sampling System—Crashworthiness Data System (NASS–CDS) and the Fatality Analysis Reporting System (FARS).

[18] For the NASS–CDS system, trained investigators collect data on a sample of tow-away crashes around the country. These data can be ''weighted up'' to national estimates. A NASS–CDS General Vehicle Form contains the following information: a critical pre-crash event, such as vehicle loss of control due to a blowout or flat tire. This category includes only part of the tire-related problems which cause crashes. This coding would only be used when the tire went flat or there was a blowout that caused a loss of control of the vehicle, resulting in a crash. The value is not used for cases in which one or more of a vehicle's tires was under-inflated, preventing the vehicle from performing as well as it could have in an emergency situation.

[19] In FARS, tire problems are noted after the crash, if they are noted at all. The FARS file does not indicate whether the tire problem caused the crash, influenced the severity of the crash, or just occurred during the crash. For example, some crashes may have been caused by a tire blowout, while in others the vehicle may have slid sideways and struck a curb, causing a flat tire which may or may not have influenced whether the vehicle experienced rollover. Thus, while an indication of a tire problem in the FARS file give some indication as to the potential magnitude of the tire problem in fatal crashes, it can neither be considered the lowest possible number because the tire might not have caused the crash, nor the highest number of cases because not all crashes with tire problems might have been coded by the police.

ESTIMATED ANNUAL AVERAGE NUMBER (1995–98 NASS) AND RATES OF BLOWOUTS OR FLAT TIRES CAUSING TOW-AWAY CRASHES—Continued

	Tire related cases	Percent tire related
Non-rollover	3,717 (28%)	0.31
Light Vehicles Total	23,463	0.51
Rollover	11,414 (49%)	4.81
Non-rollover	12,049 (51%)	0.28

* Light trucks, as used here, means pickup trucks, vans (all sizes), and SUVs.

Therefore, about one half of one percent of all crashes are caused by these tire problems. The rate of blowout-caused crashes for light trucks (0.99 percent) is more than three times the rate of those crashes for passenger cars (0.31 percent). Blowouts cause a much higher proportion of rollover crashes (4.81) than non-rollover crashes (0.28); and again more than three times the rate in light trucks (6.88 percent) than in passenger cars (1.87 percent).

FARS data for 1995 through 1998 show that 1.10 percent of all light vehicles in fatal crashes were coded with tire problems. Light trucks had slightly higher rates of tire problems (1.20 percent) than passenger cars (1.04 percent). The annual average number of vehicles with tire problems in FARS was 535 (313 passenger cars and 222 light trucks).

IV. Agency Response to Safety Problem

A. Prior Agency Rulemaking Efforts

As stated above, the TIN originated with the May 22, 1970 amendments to the National Traffic and Motor Vehicle Safety Act of 1966. Prior to that time, there were no tire labeling requirements in effect. Tire manufacturers simply followed standard industry practices.

In the early 1980's, NHTSA granted a petition for rulemaking filed by the Center for Auto Safety (the Center) requesting that 49 CFR part 574, Tire Identification and Recordkeeping, be amended to require that the TIN be placed on the outside sidewall (i.e., the sidewall visible when a tire is mounted on a vehicle) of whitewall tires and on both sides of blackwall tires. The Center stated that the current tire industry practice of placing the TIN on the inside sidewall of whitewall tires and on only one side of blackwall tires made it very difficult for most motorists to find and read the TINs on their tires once they are mounted on vehicles.

Prior to publishing an NPRM (45 FR 82293; December 15, 1980), the agency sent special orders to nine tire manufacturers who together represented 84 percent of world tire production and 90 percent of domestic production of tires for use in this country to gather information on the feasibility and costs of implementing the proposed requirements. Among the questions in the special orders were ones asking whether the tire presses were operated 24 hours a day seven days a week and, if so, what measures could be taken to ensure that workers could safely change the identification number plates in the presses. (A tire press generally works like a clam shell. The lower half of the press remains in a fixed horizontal position, while the upper half is movable. The tire mold, which also has upper and lower halves, fits inside the press.) None of the respondents suggested that changing the number plates would present insurmountable safety problems.[20] Further, based on its evaluation of these responses, NHTSA determined that such a requirement would impose costs of between $4.25 million and $5.9 million.

On April 9, 1981, the agency published a notice of intent listing 17 actions that the agency said it intended to take to reduce unnecessary regulatory burdens upon the motor vehicle and related manufacturing industries (46 FR 21203). Among them was terminating rulemaking on the location of the TIN.

Subsequently, the agency terminated the rulemaking (48 FR 19761; May 2, 1983). The agency stated that it was taking that action because it was unable to determine that the adoption of the proposal would significantly contribute to motor vehicle safety and because the compliance costs would be $4.25 to $5.9 million. Although the agency anticipated that the adoption of the amendment would increase the response to tire recall campaigns and that ultimately the action would reduce the chance of potentially unsafe tires being used on public roads, it was not able to provide a quantified estimate of the benefits to be gained from the proposed amendment. The data relied upon by the agency in issuing the proposal consisted solely of anecdotal comments by 13 consumers on difficulties they experienced in locating tire identification numbers. These 13 comments were among about 9,500 responses received by the agency in response to a survey in which it sent questionnaires to approximately 100,000 consumers. Thus, only 0.013 percent of the questionnaire recipients and 0.14 percent of the respondents reported this type of difficulty. Prior to issuing the proposal, the agency did not have any data or perform any analysis regarding the extent to which the proposed requirement would increase the number of people who find the identification number on their tires, the number of those people who respond to a recall, or the number of potentially defective or noncomplying tires that would be removed from service. No additional data regarding benefits were obtained by the agency as a result of the comment process.

B. December 2000 Advanced Notice of Proposed Rulemaking

On December 1, 2000, NHTSA published an advanced notice of proposed rulemaking pursuant to the TREAD Act and in recognition of the importance of obtaining public input before making decision regarding activities under the provisions arising under the TREAD Act. (65 FR 75222, December 1, 2000).

The ANPRM discussed NHTSA's existing tire information labeling and marking requirements, tire identification number requirements, and other labeling requirements such as those contained within its Consumer

[20] From the responses to the orders, the agency learned that of the 52 tire plants operated by the respondents in this country, 46 of them operated only five or six days a week. The remaining six plants operated all week. In the case of those 46 plants, workers could safely and easily change the number plates during one of the days when the molds were non-operational and at room temperature. The practice of the manufacturers was to change the number plates on these molds during their non-operational day. On that day, workers could easily change the number plates on the upper mold as on the lower mold. Additionally, the manufacturers operating seven days a week indicated that workers could safely change the number plates on operating upper molds in any of several ways. One way would be to place insulated blankets over the bottom molds. Another way would be to mold the whitewall side of whitewall tires on the lower mold so that the number plates could be placed on the more readily accessible upper molds.

Information Regulations, *e.g.*, UTQGS. Also discussed in the ANPRM were prior rulemaking actions and petitions pertinent to the tire labeling issues addressed by the TREAD Act, particularly those relevant to the location of the TIN, and underinflation and overloading concerns.

In addition, NHTSA solicited comments in areas such as general consumer knowledge and behavior, availability of information to consumers, TIN information, and other tire labeling information. The agency asked an extensive number of specific questions related to such matters such as tire identification number content, readability and location, loading, plies and cord material, tread wear indicators, UTQGS, speed rating, run-flat and extended mobility tires, tire inflation pressure, and the dissemination of tire safety information.

C. Summary of Public Comments on ANPRM

NHTSA received 21 comments on the December 1, 2000 ANPRM. The 21 comments were submitted by: 4 manufacturers (1 tire manufacturer and 3 vehicle manufacturers), 9 associations, and 6 other entities (2 consumer advocacy organizations and 4 individuals). The comments are summarized below.

1. General Consumer Knowledge and Behavior/Availability of Information to Consumers

• Commenters, as a group, stated that consumers are generally provided with the information that they need to properly maintain their tires, determine safe loads, and identify recalled tires. However, they also stated that this information must be presented in a simple, accurate, and comprehensive manner that would be understood by the average consumer who is not well educated about tires and tire maintenance.

• Commenters, as a group, also said that drivers are often unaware of tire safety and maintenance information or are confused by the information and need to be educated about the interaction between the information provided. While a small percentage of motorists understand and respond to load and speed rating, tread indicators, ply and cord materials, the vast majority remains unaware of this information. RMA reports that only 45% of drivers in its survey responded correctly to the question as to the source of information for recommended tire pressure and survey generally revealed that consumers do not know how to use tire information currently available. Consumers Union (CU) recommended that additional wording of uniform size and standard location appear on both sidewalls stating ''cold operating pressure: consult vehicle information.''

• According to a tire safety survey prepared for the American Automobile Association (AAA) Foundation for Traffic Safety, 50% of American drivers who check their own tire pressure incorrectly consulted the sidewall, 27% consulted the owners manual and only 18% correctly consulted the vehicle (placard) to determine the correct tire pressure. Ford reported that the owner's guide was most popular source for obtaining tire pressure information, followed by the tire pressure information on the tire itself and the certification label on the vehicle.

• Ford suggested that NHTSA conduct a focus group to better understand consumer behavior. Prior to tire recalls, consumers simply wanted clear tire pressure information, but Ford's recent experience indicated that they also want to be able to easily read their TIN numbers and to identify recalled tires and suggested ways to improve tire safety.

2. TIN Information

a. Location

• Commenters, as a group, generally believed that the TIN would be easier to find for consumers if it were located on the outward facing sidewall of tires or on both sidewalls and was of sufficient size as to be easily found and read.

• Several tire manufacturer association commenters objected to requiring a tire manufacturer to mark the TIN on both tire sidewalls because they believe that this continues to present tire manufacturing workers with a serious potential safety hazard. One of these commenters stated that, when marking a TIN on both sidewalls, an operator is exposed to danger such as a fatal accident due to mis-operation of curing machine, or burns, bone fracture or blow on head, arm, leg, the back and so on because the operator is forced to work looking up inside of a curing machine to put a stencil plate of the TIN on the upper mold. RMA suggested that the agency should require that the TIN be placed on the intended outward facing sidewall of the tire to minimize risks to workers.

• Tire manufacturing association commenters stated that, besides adverse safety consequences, cost and time due to changes in the manufacturing process are issues of concern and they recommend a suitable phase-in period. RMA, for example, states that manufacturers would face substantial costs if they must change existing molds and that total costs to the economy (costs for changing existing molds, including cost of lost production during the initial change over plus the additional ongoing weekly manufacturing costs to make the additional changes) could exceed $100 million annually. RMA states that, based on the number of recalls made over the past 30 years, the requirement to place the TIN on both sides of the sidewall is unnecessary given the cost of implementation and lack of added benefit and proposes placement of the TIN on the intended outboard side of the tire as a reasonable alternative solution.

• According to tire manufacturing association commenters, to place the TIN on both sidewalls, existing tire molds would have to be changed and because tire production occurs 24 hours a day, seven days a week, there would be substantial lost production costs to make the changes, plus on-going costs, to make changes to both sides of molds.

• Commenters generally agreed that the TIN should be placed where there will be a minimum possibility of scuffing. Commenters stated that the TIN should be placed as closely to the wheel's mounting bead or rim flange as possible, as is current practice, to avoid contact with curbs. One of these commenters stated that while it believes that the TIN would be easier for consumers if it were located on the outboard sidewall of the tires, it would be less vulnerable to abrasion as a result of contact with curbs and other hard objects if it were on the inboard sidewall of the tire as compared with the outboard sidewall. Two association commenters stated that the TIN should remain in its current location.

b. Content and Readability

• No commenter suggested that additional information be added to the TIN. Most commenters suggested that no change be made to contents of the TIN. Ford recommended that NHTSA should require a standardized format and font height on the outward facing sidewall of a tire and General Motors recommended that the size code in the TIN is redundant information that can only be understood by reference to Section 574 and could be eliminated from the TIN. Consumer's Union recommended standardizing placement of the TIN and date of production information and including the lettering ''Manuf. ID'' and ''Prod. Date. ww/yy'' above these codes.

• Most commenters stated that optional information in the TIN should not be removed because, for example,

the tire type may prove beneficial for consumers seeking to replace their tires with a similar type and because the optional symbols better enable the identification of the tire construction of the tire and because this information could be important in distinguishing recalled tires from similar tires of the same brand and tire size.

• Consumer group commenters stated that the TIN should be standardized by NHTSA in terms of font, font size, space, raised letters, and placement and location on the sidewall.

• Tire manufacturer association commenters stated that the symbol height of the TIN should not be changed because it will complicate the limited sidewall space available and because placing the TIN on the intended outboard sidewall will eliminate any perceived problem. Consumers Union commented that 5⁄32 inch (4 mm) is not an adequate font size for the TIN digits to provide optimum visibility, particularly for vision-impaired individuals.

3. Other Tire Labeling Information

a. Load Ratings

• Generally, commenters, as a group, asserted that either the maximum load rating or a load index value should continue to be shown on tires. Although the commenters disagree on which form of information makes load information more accessible to the consumer, most acknowledged that it is generally difficult for a consumer to know the actual load on an individual tire. Several commenters suggested improvements in consumer education concerning the importance of load and its relationship to proper tire inflation. RMA suggested that the maximum load rating be removed from the tire so that consumers will seek out the appropriate vehicle loading on the certification label or vehicle tire placard.

• RMA commented that the most effective way to communicate the relationship between a tire's load carrying capacity and vehicle load at a given wheel position and to ensure the purchase of correct replacement tires is through the use of load index values. If a load index value were required on the tire and the vehicle tire placard, the consumer would then simply match a two or three digit number on the tires and vehicle tire placard to assure proper tire load capacity for their vehicle.

• Tire manufacturer and dealer associations commenters stated that most customers rely on dealers for most information on tire safety and maintenance. One tire dealer association commenter said that approximately half of the tire dealers provide information to all customers and approximately half supply information upon request. The same commenter stated that most dealers do not routinely check to see that the tires purchased are correct for the GVWR and GAWR, although most do reference GVWR or GAWR as necessary.

• Commenters, as a group, agreed that few motorists use or understand the load rating information found on sidewall tires. Advocates suggested that the load rating information remain on the tire and that NHTSA needs to provide specific consumer information about the consequences of under- and of overinflation of tires and their interdependent relationship with vehicle loads and potential instability. Tire manufacturer association commenters suggested that the load ratings be removed from the tires so that drivers will have to consult the vehicle placard for load limit information. Vehicle manufacturers generally support leaving load rating information on the tire sidewalls.

• Commenters generally stated that motorists rarely know the weight of their vehicles, empty or loaded, because this would require weighing of the vehicle. A tire manufacturer association stated that some motorists load to the capacity of the dimensions of the vehicle or they conduct an eyeball inspection.

• Commenters indicated that overloading frequently occurs, to varying degrees, on pick-up trucks, particularly full-size pick up-trucks. Data provided by a vehicle manufacturer indicate that almost all respondents surveyed in a study underestimated load, with the average respondent underestimating load for his or her vehicle by 36%. Tire manufacturer association commenters asserted that consumer knowledge, or lack thereof, instead of current allowances in tire load ratings, is to blame for overloading.

b. Plies and Cord Materials

• Commenters, as a group, generally agreed that while ply and cord information is generally of no value to consumers except when replacing tires or in the event of a recall, it should remain on the tire for these purposes. Commenters agreed that ''mileage warranty'' information is of no safety value to consumers and should be communicated at point of sale instead of on tires. One tire retread association commenter noted that ply and cord material is important for tire retread, repair, and recycling.

c. Tread Wear Indicator

• Vehicle manufacturer and tire manufacturer association commenters stated the treadwear indicator information should not be required to be labeled on the vehicle or tire because the information is more effectively and comprehensively provided in owner's manuals. RMA recommends that NHTSA regulations for inspection of vehicles in use (49 CFR 570.9 & 570.62) be changed to indicate that the presence of a treadwear indicator in any major groove be used as an indication of wear out rather than the current requirement of the presence of treadwear indicators in two adjacent major grooves (at three locations spaced approximately equally around the tire.) One consumer commenter stated that consumers could benefit from clearer sidewall identification and that consumers would benefit if the following words appeared elsewhere on the sidewall, ''replace tire when worn to indicator.''

d. Uniform Tire Quality Grading System (UTQGS)

• One consumer commenter stated that the UTQGS information is possibly the most important item of consumer information regarding tire performance and should be required to be marked on tire sidewalls for all light vehicles weighing 10,000 GVWR or less. A consumer commenter also stated that this information should be provided in large block letters in contrasting colors. Further, consumers should be provided with a plain language explanation of the safety considerations underlying the UTQGS ratings. The commenter also said it is preferable that an explanation of UTQGS be provided at the point of sale. A vehicle manufacturer added that more consumer education concerning the effect of inflation and loading conditions on UTQGS ratings is necessary. One tire manufacturer association commenter argued that UTQGS only serves to confuse consumers, is generally ignored, and should be discontinued. Another commenter asserts that the treadwear rating should be changed to a statement concerning the expected miles of treadwear.

• Tire manufacturer association commenters did not support labeling additional categories of tires with UTQGS information and suggested that UTQGS information either be eliminated or be replaced by a service description (load index and speed rating) and that treadwear and traction should be made available to consumers at point of sale. Consumer commenters, on the other hand, stated that UTQGS

should apply to all tires for use on cars, SUVs, pickups, and on winter tires, particularly because UTQG traction grades are probably the most meaningful of the UTQG grades for the consumer and should also be applicable to mud and snow tires.

e. Speed Rating

• Generally, commenters, as a group, believed that a tire's speed rating is important, although not necessarily intuitive, to consumers and should be required to be indicated on the tire. Commenters agreed that consumers should be helped to understand, through consumer education, that they should purchase replacement tires of an equal or greater speed rating to those issued as original equipment. One consumer group commenter suggested that maximum speed limitations should be noted on the sidewall as ''speed capacity'' rather than ''maximum speed'' and that UTQG temperature grades could be eliminated since they are redundant with the ''speed capacity'' information.

f. Run-Flat and Extended Mobility Tires

• Tire association commenters and Harley Davidson stated that run-flat and extended mobility tire capability should be labeled on the tire sidewall as well as on the vehicle placard. General Motors (GM) commented that this labeling would not add any additional value because low inflation pressure warning systems accompany these tires and the capability is noted in the owner's manual.

g. Retreaded Tires

• A tire retread association commenter stated that the current labeling requirements for retreated tires are sufficient because those tires comprise a very small market share, are used primarily for commercial applications, and are serviced by well-trained service personnel.

h. Tire Inflation Pressure

• Commenters suggested that the following items be added to the vehicle placard: payload information (including an explanation of payload), tire service description (load index and speed symbol), high speed inflation pressure information, and speed rating. Commenters suggested the following locations for the tire placard: Door edge pillar, fuel door, visor, dashboard, glove box, door jamb. Commenters also suggested that the placard be in a standardized format and location in the vehicle. One vehicle manufacturer stated that the tire size, speed rating, cold inflation pressure and load capacity should be on the certification label.

• While General Motors and the International Tire and Rubber Association (ITRA) supported retaining the maximum inflation pressure label because it provides a ''point of reference'' inflation pressure, most commenters argued that the maximum inflation pressure should be removed from the sidewall of tires because consumers confuse it with the recommended inflation pressure found on vehicles and because inflating a tire to maximum inflation pressure may cause uneven wear and other failures. Further, one tire manufacturer association commenter suggested that consumers will look at the certification label or vehicle placard for pressure information if pressure information is not contained on the tire. One tire manufacturer association commenter asserted that removing the maximum inflation pressure would improve safety if the correct inflation pressure is clearly and conveniently communicated to consumers and if consumers act on this information. One vehicle manufacturer commenter remarked that there should be a marking requirement for tires that would direct operators to use the information contained on the vehicle tire placard.

i. Dissemination of Tire Safety Information

• Commenters neither supported nor opposed a tire inflation warning label. Most, however, suggested that consumer awareness of correct tire pressure, size, and the relationship of load and tire pressure is appropriately addressed through consumer education.

• Commenters, as a group, said that messages about tire inflation, vehicle loads and handling, and other safety effects need to be communicated repeatedly and through the use of different media such as agency brochures, manufacturer labels, owner's manual entries, and point-of-sale literature provided by tire manufacturers. Also, a hierarchical system of providing safety information to consumers in varying forms and details based on the essential nature of the performance and safety information should be employed. The placard should be mounted consistently in the same place on all vehicles and be both easily found and readable.

j. Motorcycles and Trailers

• One vehicle manufacturer opposed including applying amendments to the tire information labeling requirements to motorcycle tires. Two tire manufacturer associations stated that trailer and motorcycle tires should be required to have the same information as other highway tire categories molded into the sidewall.

k. Font height for labeling information

• Two tire manufacturer association commenters stated that there is no need to change the current font height specified and indicated that this issue needs to be considered as a part of a broader evaluation of tire marking and consumer awareness. Consumer group commenters, however, argued that the current font height is inadequate and needs to be increased and made uniform for the different labeling requirements. Commenters generally expressed the view that using contrasting colors for labeling is not feasible due to manufacturing process concerns and consumer preference.

4. Harmonization Issues

• RMA suggested that ECE regulations 30 and 54 address issues similar to those raised in the ANPRM. Additionally, RMA called attention to the work being done under WP.29's ongoing process for developing a global technical regulation for tires and the industry's GTS–2000 proposal.

• Manufacturers and association commenters pointed to both the WP.29 process and to the GTS–2000 proposal as means to best accomplish harmonization of this standard with foreign standards and to reduce redundancy in the current situation. These commenters suggested that decreased costs and increased information consistency would be benefits of minimizing regulatory divergence.

5. Other Comments

• Some comments included suggestions for improving the organization and coherency of the tire information that currently appears in more than six different standards and sections on tire information.

• Commenters also suggested requiring improved availability of safety related service information, including an in-vehicle safety information booklet which, in addition to owner's manual, would provide explanations concerning the operation and use of safety related systems and equipment such as tires.

D. Focus Groups

In March 2001, NHTSA conducted a series of eight focus groups to (1) explore consumer perceptions of motor vehicle tire labeling, (2) identify aspects of motor vehicle tire labels that are potentially confusing, and (3) identify means for optimizing the likelihood that

motor vehicle safety labels will be easily read and comprehended. *The Focus Group Report,* dated March 20, 2001, has been placed in the docket for this rulemaking. Four focus groups were conducted in Richmond, Virginia, and four in Phoenix, Arizona. Each focus group was comprised of approximately nine persons 18 to 75 years old who fulfilled the following criteria: (1) possess a current driver's license, (2) primarily responsibility for taking care of personal vehicle, (3) owners/users of passenger cars, SUVs, van or minivan, motorcycle or pick-up truck, (4) no current employment relating to marketing or public relations, motor vehicles or motor vehicle parts, or government employment relating to the regulation of the motor vehicles. The composition of the groups represented a mix of income, educational attainment, household income and race.

The moderator for the focus groups conducted three exercises for each group of participants. In the first exercise, the moderator discussed with participants their current use of tire information. In the second exercise, the moderator solicited responses to a tire information presentation using a brand new tire and a diagram provided by NHTSA to demonstrate the variety and nature of NHTSA-mandated information on tires. In the third exercise, the moderator presented four variations on standard tire placards (called Concepts A through D in the Report) and solicited comments from the participants. The four formats included 2 black-and-white and 2 color versions. The color and black-and-white versions each included a small version that focused on air pressure and a longer version that included tire and other vehicle information, e.g., load, seating designation, etc. Conclusions from the first two exercises were:

- Tire information is ignored except when consumers are responding to conspicuously low tire pressure or buying new tires;
- Participants only had knowledge of one or two of the following aspects of tire information: tire size, brand name, price, weight load;
- At point of sale, tire information and documentation other than price receipt and warranty is not provided;
- Retailers should be required to provide tire information, e.g., adhesive tire information labels or brochure, at point of sale;
- Consumers are unaware that there is a tire placard in their personal vehicle;
- Owner's manuals are used on a limited basis for tire information;
- Consumers have little knowledge of the information available on the tire sidewall, besides tire pressure, type and brand name. Most were perplexed by the array of alpha and numeric codes appearing on the demonstration tire;
- Metric numbers are not understood by consumers;
- Too much information on a tire is preferable to too little information;
- Tire information sheets, similar to those provided with prescription drugs, should be readily available to vehicle and tire purchasers;
- Consumers want to learn more about the meaning of the information that appears on tires, e.g., tire codes and ratings;
- The following information should be displayed on the tire: date of manufacture and recommended replacement interval;
- Tire information should be presented in ''plain language'';
- Tire information should be presented in a larger typeface;
- Tire information should appear on both sides of the tire;
- Tire safety information is too important and too tire-specific to be relegated to the owner's manual or tire placard—it should be provided at the point of new vehicle or replacement tire purchase in paper form, e.g., brochure;
- Owner's manuals, while a good location for general tire safety and education information, is not an appropriate location for tire-specific information; and
- The term ''cold tire pressure'' is not readily understood or is often misunderstood as relating to the outside temperature/weather conditions.

With regard to the actual content, placement and design of the Tire Safety Information Placards discussed in the third exercise, the following recommendations were made:

- Add/use color formats for the tire placard instead of only black-and-white;
- Use small placard formats rather than large placard formats;
- Use a tire icon, as a visual cue, on the placard (an icon makes the purpose and subject matter of the placard more easily identifiable and facilitates use of the placard information by drivers with marginal literacy skills); and
- Standardize the placement of tire placards on the B-pillar.

VI. Agency Proposal

A. Summary of Proposal

The agency is proposing a single standard for light vehicle tires, FMVSS No. 139, *New Pneumatic Tires for Light Vehicles,* which would contain revised versions of the existing labeling requirements that address the following aspects of tire and vehicle labeling: Tire markings, the Tire Identification Number (TIN), vehicle placard content and format, placard location, and owner's manual information. The standard would require tires for passenger cars, multipurpose passenger vehicles, trucks, buses and trailers with a gross vehicle weight rating (GVWR) of 4,536 (10,000 pounds) or less, manufactured on or after November 1, 2003, to comply with the labeling requirements.[21] The proposed requirements are summarized below.

NHTSA proposes that the TIN, size designation, maximum permissible inflation pressure, and maximum load rating be placed on both sides of light vehicle tires. Requiring the TIN and size designation to be on both sides would ensure that that information would be on the sidewall facing outward, regardless of how the tire is mounted. Requiring that the other items of information be on both sidewalls would aid consumers in properly maintaining their tires and loading their vehicles.

NHTSA is proposing two changes to the TIN. First, the agency proposes to require a reordering of information in the TIN so that the first six characters would contain the information required for determining whether a particular tire is subject to a recall. The first two characters would reflect the plant code, and the next four characters would reflect the date code. Second, the agency proposes to require that each character be 6 mm (¼″) high. The agency believes that a requirement for a uniform TIN font size would significantly improve the readability of the TIN.

The agency proposes four sets of revisions for the presentation of tire inflation pressure and load limit information on the vehicle placard required for passenger cars by S4.3 of § 571.110 and to be required for all light vehicles with a GVWR of 10,000 pounds or less under this proposal.[22] This placard, permanently affixed to the glove compartment door or an equally accessible location, currently displays the vehicle capacity weight, the

[21] Therefore, this proposal is applicable to LT tires up to load range E. This load range is typically used on large SUVs, vans, and trucks.

[22] FMVSS No. 120 currently requires that each motor vehicle other than a passenger car show, on the label required by § 567.4, or on a tire information label (S5.3.2(b)), the recommended tire size designation appropriate for the GAWR, the tire size and type designation of rims appropriate for those tires, and the recommended cold inflation pressure for those tires such that the sum of the load ratings on the tires on each axle (when the tire's load carrying capacity at the specified pressure is reduced by dividing 1.10, in the case of a tire subject to FMVSS No. 109, i.e., a passenger car tire) is appropriate for the GAWR.

designated seating capacity (expressed in terms of total number of occupants and in terms of occupants for each seat location), the vehicle manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight, and the manufacturer's recommended tire size designation.

First, the agency proposes that tire inflation pressure information would be visually separated by a red colored border on the existing vehicle placard or, alternatively, be placed on a separate tire inflation pressure label. The vehicle placard would contain only the information specified in the proposed version of S4.3 (paragraphs (a)–(e)).[23] This information could not be combined with other labeling or certification requirements. The vehicle placard would also have to meet the proposed color and content requirements as discussed below.

Second, the agency also proposes that the tire inflation pressure label and vehicle placard meet the following three requirements: (1) The tire inflation pressure information would be in color—red, yellow, and black on a white background, (2) contain a black and white tire symbol icon in the upper left corner, 13 millimeters (.51 inches) wide and 14 millimeters (.55 inches) tall/high, and 3) include the phrases ''Tire Information'' and ''See Owner's Manual For Additional Information'' in yellow text on a black background.

Third, the agency proposes to replace the vehicle capacity weight statement on the vehicle placard with the following sentence: ''[t]he combined weight of occupants and cargo should never exceed XXX pounds.'' The ''XXX'' amount would equal the ''vehicle capacity weight'' of the vehicle as defined in FMVSS No. 110. The information is the same as that currently required to be placed on the vehicle placard by manufacturers. However, the agency believes that the statement ''the combined weight of occupants and cargo should never exceed * * *'' is easier for consumers to comprehend than a technical phrase such as ''vehicle capacity weight.'' ''Vehicle capacity weight'' is not intuitive to consumers and it requires a vehicle operator to look to the owner's manual or standard to understand which factors are included in the calculation of the sum on the placard.

Fourth, the agency proposes to replace the vehicle's recommended tire size designation with the tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer. While in most instances these two numbers would be identical, this minor revision insures that the consumer is provided with the correct tire inflation pressure information for the tire size actually installed on his vehicle as original equipment by the vehicle manufacturer.

We are proposing these placard changes in response to survey data which indicate that consumers need assistance in locating recommended tire pressures for their vehicle's tires and understanding load limits. The use of colors and a visual cue, such as a tire symbol icon, would aid drivers in noticing and locating this imperative information. By expressing the vehicle's load limit in easily recognizable terms such as ''passenger and cargo weight'', as opposed to ''vehicle capacity weight'' the proposed placard revisions would also aid consumers in understanding and adhering to load limit guidelines.

The agency proposes that the placard and/or label containing tire inflation pressure be located on the driver's side B-pillar. If a vehicle does not have a B-pillar, then the placard and/or label would be placed on the edge of the driver's door. Currently, S4.3 of § 571.110 specifies that the vehicle placard be affixed to the glove compartment door or an equally accessible location. A standardized location for tire information placards and labels would contribute to consumer awareness of recommended tire inflation pressures and load limits.

The agency proposes that owner's manuals for light vehicles contain discussion of the following five subject areas: (1) Tire labeling, (2) recommended tire inflation pressure, (3) glossary of tire terminology, (4) tire care, and (5) vehicle load limits. A single, reliable source containing the proposed required information for the tires and tire safety information listed above would aid consumers by providing the information that they need to properly maintain their tires and adhere to recommended load limits.

B. Applicability

The proposed FMVSS No. 139 and its labeling revisions would apply, except where noted, to new pneumatic tires for use on motor vehicles with a GVWR of 10,000 pounds or less, manufactured after 1975, except for motorcycles and LSVs, and for new motor vehicles with a GVWR or 10,000 pounds or less manufactured after September 1, 2003.[24]

Given the increasing consumer preference for light truck use for passenger purposes, the agency is proposing that the safety requirements for passenger car tires also be made applicable to LT tires (load C, D, E) used on light trucks. Further, LT tires are increasingly used in the same type of on-road service as P-metric tires on light vehicles. Recent sales data for heavier trucks indicate that the use of these tires on passenger vehicles will continue to increase in the near future.

NHTSA is not proposing to require that FMVSS No. 139 apply to motorcycle tires because motorcycle tires are of a design and construction unlike the types of vehicle tires that would be subject to the proposed standard. Further, the agency is currently not aware of any consumer information concerns or problems associated with motorcycle tires. For similar reasons, NHTSA is also not proposing to require that the new standard be applicable to tires beyond load range E, which are typically used on medium (10,000–26,000 lbs. GVWR) and heavy vehicles (greater than 26,001 lbs. GVWR), and temporary spare tires.

To maintain consistent labeling requirements for all tires for use on light vehicles, the proposed labeling requirements would also be applicable to retreaded pneumatic passenger car tires and new non-pneumatic tires for passenger cars. More specifically, FMVSS No. 117, which specifies requirements for retreaded pneumatic passenger tires and FMVSS No. 129, which specifies performance requirements for new non-pneumatic tires for passenger cars would be revised to include the proposed labeling requirements.

C. Proposed Labeling Requirements

1. Tire Markings

NHTSA proposes that all labeling information specified under S4.3 of FMVSS No. 109, including the TIN, be placed on both sides of light vehicle tires except for that information cited in paragraphs (d), (e), (f) and (g) of S4.3. The required information in these paragraphs (generic name of cord

[23] (a) Vehicle capacity weight expressed as ''THE COMBINED WEIGHT OF OCCUPANTS AND CARGO SHOULD NEVER EXCEED XXX POUNDS'';

(b) Designated seating capacity (expressed in terms of total number of occupants and in terms of occupant for each seat location);

(c) Vehicle manufacturer's recommended cold tire inflation pressure;

(d) Tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer; and

(e) ''SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION''.

[24] The agency anticipates that the proposed requirements of FMVSS No. 139, including the labeling revisions discussed here and the performance requirements and testing procedures to be proposed in a forthcoming rulemaking, if adopted, would supersede the requirements of FMVSS No. 109. The deletion of FMVSS No. 109 will be discussed further in the forthcoming proposal.

material, actual number of plies, ''tubeless'' or ''tube type'' designation, and the word ''radial'' if applicable) must be present on one of the sidewalls. Requiring that ply, cord, and tube and tire type information only be present on one sidewall would reduce the stringency of FMVSS No. 119 which currently requires that light truck and MPV tires display the information on both sidewalls.

Comments to the docket in response to the ANPRM questions concerning placement of the TIN expressed a range of different viewpoints. Most commenters stated that placing the TIN on the outside wall of the tire was a desirable requirement. Further, many respondents also supported putting the TIN on both sides of the tire to ensure that it would be visible on the outboard tire wall, as well as the inside tire wall where there is a lesser chance of it being scuffed off of the tire. However, several tire industry respondents did not support putting the TIN on both sides of the tire because of manufacturing costs and safety issues.

The recent Firestone recall highlighted the difficulty that consumers have in identifying recalled tires when tires are mounted so that the TIN is located on the sidewall facing inwards. Improved access to the TIN would greatly enhance the consumers' ability to determine if their tires have been recalled.

Consumer commenters and focus group participants also said that other tire labeling information, such as size, speed rating, load rating and maximum pressure, should also be required on both sides of the tire to ensure that it is readily visible to consumers.

With regard to the number of plies and generic name of cord material used in the plies, most respondents believed that information to be of limited safety value to consumers and suggested its removal from the sidewall. The ITRA expressed the view that the cord and ply material is very important to the tire retread, repair and recycling industries because this information enables consumers and industry professionals to determine the level of risk when inflating, repairing, retreading or servicing a specific tire. NHTSA believes that it is sufficient to require that this information appear on one sidewall. There is no known advantage that would arise from requiring this information on both sides of the tire.

Several tire manufacturer association commenters objected to requiring a tire manufacturer to mark the TIN on both tire sidewalls because they believe that this continues to present workers with a serious potential safety hazard. As discussed above, the agency learned during prior rulemaking efforts (45 FR 82293, December 15, 1980) that changing the TIN number plates in the tire molds would not present insurmountable safety problems. NHTSA believes that advances in tire manufacturing technology, such as removable stencil plates, have allowed for a significant reduction in the safety hazards associated with the manufacturing process by enabling workers to change labeling information on the molds outside of the tire press (A tire press generally works like a clam shell). Further, the costs associated with changing molds to implement this requirement are not considered to be onerous as discussed in the Costs section of this document. Additionally, the tire manufacturers' suggestion that the TIN be placed on the intended facing sidewall of the tire is not practicable because the vast majority of tires produced are reversible, not asymmetrical.

Requiring that the tire information specified above be placed on both sides of light vehicle tires would provide consumers with readily accessible recall information, without creating significant additional costs to tire manufacturers, and would ensure that the retread, repair and service industries continue to be provided with necessary recall information. Reducing the amount of information required to be placed on both sides of light truck tires would also result in cost savings to manufacturers that would offset some of the increased costs resulting to changes to the TIN and the labeling of passenger car tires.

Several commenters suggested adding additional information to the tire sidewall, e.g., load index values, specifying what the digits of the TIN represent, a marking requirement directing the vehicle operator to use the information contained on the vehicle placard, a marking requirement for run-flat and extended mobility tire capability, and a warning stating: ''replace tire when worn to indicator.'' NHTSA believes that these suggestions are not feasible. As run-flat tires and high performance low-profile tires are developed and become more common, tire diameters will increase with consequent decrease in sidewall heights. That means that reserving the ever-decreasing space on tire sidewalls for displaying necessary and required information will become even more important in the future. Other suggested tire labeling, such as load index values, are not intuitive to consumers and would require the vehicle operator to seek out reference materials and/or would require the agency to require more information to be added to the already crowded vehicle placard. NHTSA believes the items, explanations, and warnings suggested by the commenters would be better and more effectively addressed through consumer information campaigns rather than through requirements for additional in-vehicle and on-vehicle information.

2. TIN

The agency proposes two revisions to the TIN: (1) Require that the first six characters of the TIN to contain the following information: The first two characters would reflect the plant code, and the next four characters would reflect the date code, and (2) require 6 mm (¼″) as a uniform height font size (see Figures 1 & 2).

BILLING CODE 4910–59–P

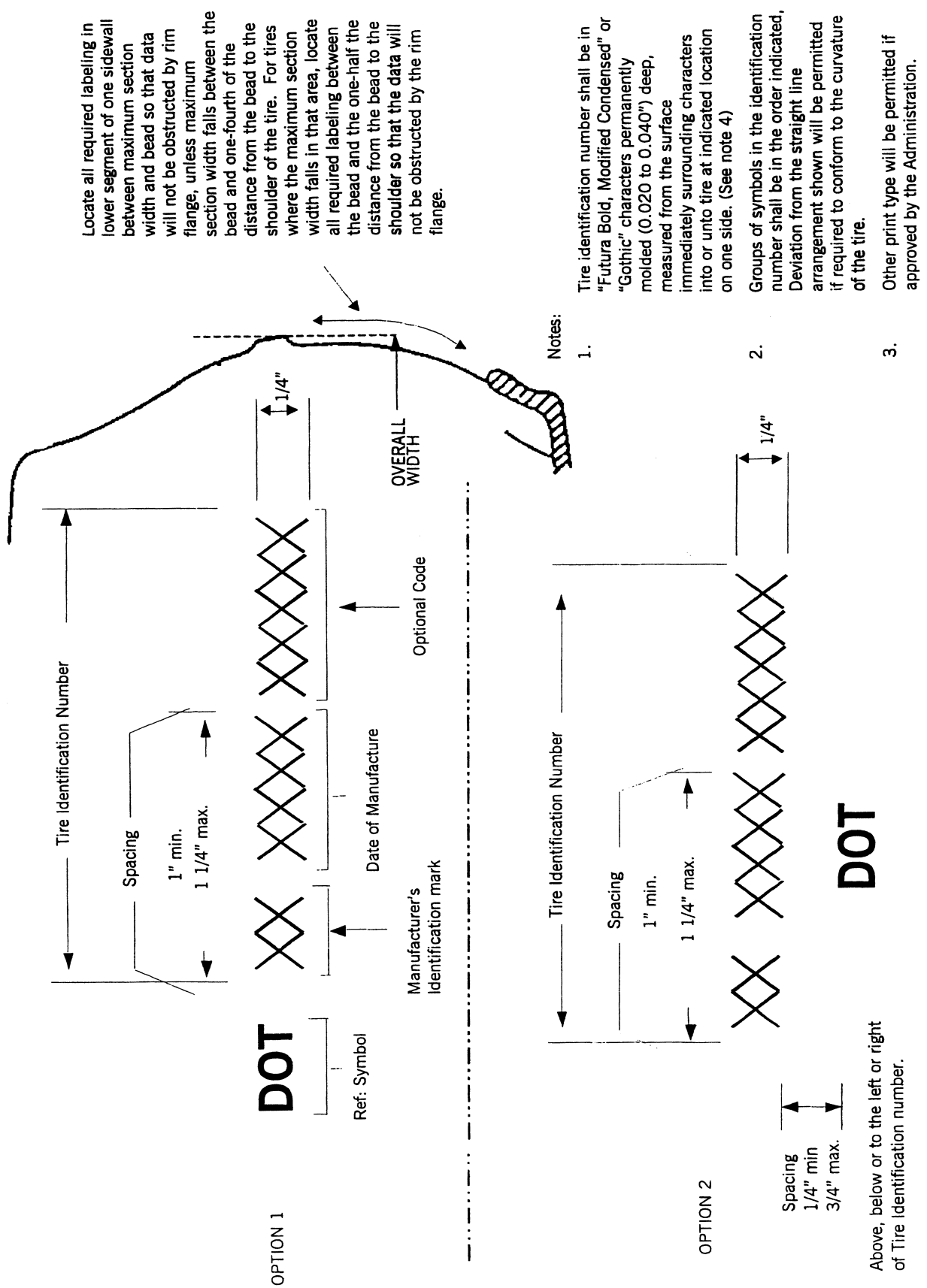

FIGURE 1: IDENTIFICATION NUMBER FOR NEW TIRES

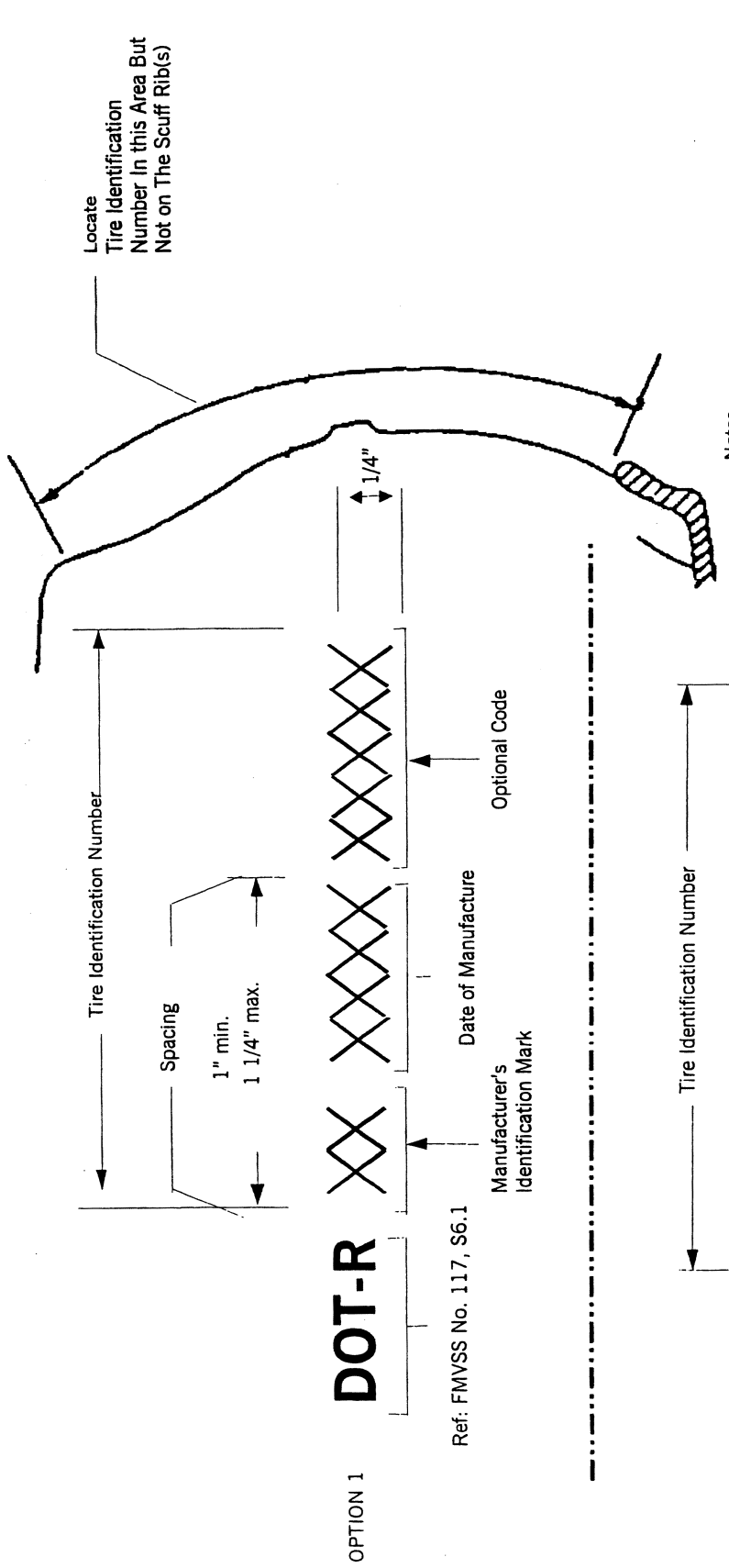

FIGURE 2. IDENTIFICATION NUMBER FOR RETREADED TIRES

BILLING CODE 4910–59–C

Currently, the plant code resides in the first two digits of the TIN and the date of manufacture resides in the ninth through twelfth digits of the TIN. These two required sets of information are separated by optional and tire size information that reside in the third through eighth digits in the TIN. The optional information is only useful to the tire manufacturer and the tire size information is already labeled elsewhere on the tire.

The commenters on the ANPRM and the focus groups expressed consistent support for making the TIN more user-friendly and readable. To that end, the first proposed revision to the TIN reorders the sequence of the TIN characters to require that the first six numbers be those that are necessary for identifying recalled tires (i.e., the plant code and the date code). Since the tire size is required to be labeled elsewhere on the tire under another provision, the requirement for including the tire size code in TIN would be deleted. The proposed revisions to the sequence of information in the TIN would make the TIN easier for consumers to read and understand for recall and other purposes.

The second proposal, which would require a 6 mm (1/4″) uniform height font size, would enhance the readability of the of the TIN. Currently, 574.5 requires the characters in the TIN, except for those in the fourth grouping, to be a minimum height of 1/4″. The characters in the fourth grouping are presently required to have a minimum height of 5/32″.

In previous rulemakings and comments to the ANPRM, consumer group commenters have suggested that 4 mm was not a sufficient font size for the TIN, particularly for individuals with visual impairment. Comments on the ANPRM and from the focus groups concerning the readability of the TIN did not specify a particular font size.

The agency believes that a uniform 6 mm TIN font height is a more appropriate size for information that is critical in the event of a recall. The larger size will make the TIN easier to read, without imposing a significant burden on tire manufacturers. 6 mm is approximately the equivalent of Times New Roman font size 20 in Windows 2000. While 6 mm would be the minimum required font size, there is no restriction that would prevent tire manufacturers from using a larger font size for the TIN characters. The agency requests comments on the readability of a 6 mm font size for the TIN characters. Please be specific in your response and provide a basis for your answer.

3. Vehicle Placard Content and Format

The agency proposes four sets of revisions for the presentation of tire inflation pressure and vehicle placard information. This placard, permanently affixed to the glove compartment door or an equally accessible location on passenger cars and to be required for all light vehicles with a GVWR of 10,000 pounds or less under this proposal,[25] currently displays the vehicle capacity weight, the designated seating capacity (expressed in terms of total number of occupants and in terms of occupants for each seat location), the vehicle manufacturer's recommended cold tire inflation pressure for maximum loaded vehicle weight, and the manufacturer's recommended tire size designation.

First, the agency proposes that tire inflation pressure information would be visually separated from the other information by a red colored border on the existing vehicle placard 13 required by S4.3 of § 571.110 or, alternatively, be placed on a separate tire inflation pressure label. The vehicle placard would contain only the information required by S4.3 of 571.110, could not be combined with information or statements required by other labeling or certification requirements, and would meet the proposed color and content requirements as described below.

Second, the agency also proposes that if a vehicle manufacturer uses the separate tire inflation pressure label, that label must meet the following three requirements: (1) the tire inflation pressure information on the placard would be in color—red, yellow, and black on a white background—as illustrated in Figures 3 & 4 below, (2) contain a black and white tire symbol icon that is in the upper left corner of the placard, and is 13 millimeters (.51 inches) wide and 14 millimeters (.55 inches) (see Figures 3 & 4 below), and (3) the label and placard would both include the phrases ''Tire Information'' and ''See Owner's Manual For Additional Information,'' in yellow text on a black background as illustrated in Figures 3 and 4 below. If, alternatively, the manufacturer uses the separate tire inflation pressure label, that label must meet those three requirements.

[25] FMVSS No. 120 currently requires that each motor vehicle other than a passenger car show, on the label required by § 567.4, or on a tire information label (S5.3.2(b)), the recommended tire size designation appropriate for the GAWR, the tire size and type designation of rims appropriate for those tires, and the recommended cold inflation pressure for those tires such that the sum of the load ratings on the tires on each axle (when the tire's load carrying capacity at the specified pressure is reduced by dividing 1.10, in the case of a tire subject to FMVSS No. 109, i.e., a passenger car tire) is appropriate for the GAWR.

Third, the ''vehicle capacity weight'' statement on the vehicle placard would be replaced by the following statement: ''[t]he combined weight of occupants and cargo should never exceed XXX pounds.'' The ''XXX'' amount would equal the vehicle capacity weight of the vehicle as defined in FMVSS No. 110. The information is the same as that currently required to be placed on the vehicle placard by manufacturers. However, the agency believes that the statement ''the combined weight of occupants and cargo should never exceed * * *'' is easier for consumers to comprehend than a technical phrase such as ''vehicle capacity weight,'' which is not intuitive to consumers. To understand the term ''vehicle capacity weight'', a driver must look through the owner's manual for an explanation of how that weight is calculated and what significance that weight has for the safe operation of his or her vehicle.

Fourth, the agency proposes to replace the vehicle's recommended tire size designation with the tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer. While in most instances these two numbers would be identical, this minor revision insures that the consumer is provided with the correct tire inflation pressure information for the tire size actually installed on his vehicle as original equipment by the vehicle manufacturer. The agency considered adding a requirement for the vehicle manufacturer to label all recommended optional tire size designations on the vehicle placard and/or tire inflation pressure label. While this consideration would provide recommended tire inflation pressure information for consumers who opt to replace factory installed tire sizes with optional tire sizes, we have tentatively concluded that this is not a feasible requirement for three reasons. First, most light vehicles are equipped with original equipment and replacement tires having the same tire size designation as those tires installed by the vehicle manufacturer. Second, consumers are typically not familiar with or cognizant of the size of the tires on their vehicles. A listing of more than one tire size designation and recommended tire inflation pressure would require the vehicle operator to seek out the tire size designation on the vehicle's tires. Third, listing more than one tire size designation and recommended inflation pressure would require more information to be added to the already crowded vehicle placard. The agency believes that requiring a vehicle operator to take an extra step to

properly inflate his tire and potentially overcrowding the vehicle placard and/or tire inflation pressure label with information would discourage use of tire inflation pressure information on the placard and/or the label.

The following are samples of the proposed vehicle placard and tire inflation pressure label:

BILLING CODE 4910–59–P

Vehicle Placard

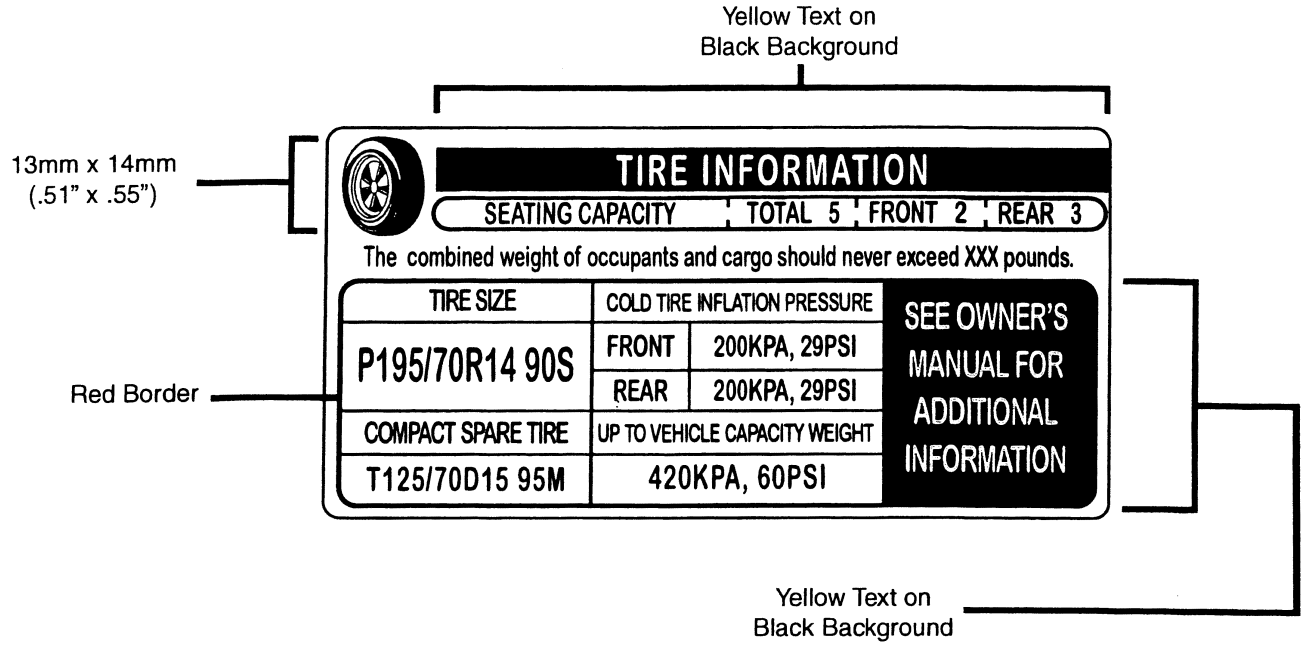

Figure 3

Tire Inflation Pressure Label

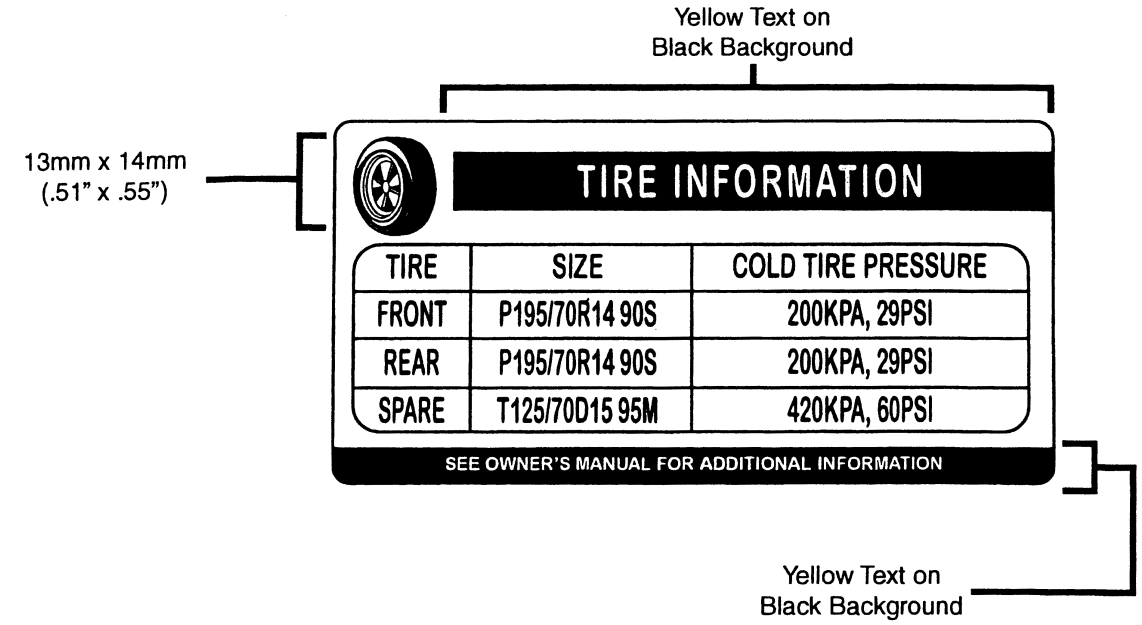

Figure 4

As discussed above, survey data indicate that most individuals are unaware of the existence and/or location of the tire inflation pressure and load limit information placards. Surveys also confirm that maximum tire pressure is often confused with recommended inflation pressure. Surveys have not addressed load limit issues, but the results from NHTSA's focus groups and comments received in response to the ANPRM indicate that consumers are unaware of that these limits exist, where they are located, and how to use them.

NHTSA's focus groups tested different versions of existing and proposed tire placards to help determine the most effective way of attracting the attention of consumers to this information and making it more understandable to them. In response to the testing, focus group participants overwhelmingly preferred color formats with contrasting colors, e.g., yellow on black, instead of black and white formats because the color attracted their attention and aided in their comprehension of the material. Participants also strongly believed that a visual cue, such as a tire symbol icon, would aid drivers in identifying and locating this imperative information.

Based on the comments to the ANPRM and the focus group results, NHTSA also recognizes that consumers need assistance in understanding load limits and how inflation pressure affects the load carrying capacity for their vehicle and in determining the total load limit in pounds for their vehicle. For instance, by replacing the technical term ''vehicle capacity weight'' on the placard with a sentence containing easily understandable terms such as ''passenger weight'' and ''cargo weight'', the proposed placard revisions should also aid consumers in locating and adhering to recommended load limit guidelines as well as recommended inflation pressures.

4. Placard Location

The agency proposes that the vehicle placard and tire inflation pressure label be located on the driver's side B-pillar. If a vehicle does not have a B-pillar, then the placard and label would be placed on the edge of the driver's door. The tire inflation pressure label would be placed proximate to the vehicle placard. There would be no prohibition on placing additional tire inflation pressure labels on the vehicle in locations other than the B-pillar, except as precluded by other safety standards.

Currently, S4.3 of 571.110 specifies that the vehicle placard be affixed to the glove compartment door or an equally accessible location. NHTSA's focus group results indicate that many consumers are unaware of the existence of and or location of tire inflation pressure and load limit information. Participants in the focus groups noted a strong preference for one standardized location for the placard. Both the focus group participants and commenters on the ANPRM cited the B-pillar, followed by the driver's door edge, as the most preferable locations for the placard. A standardized location for tire information placards would contribute to consumer awareness of recommended tire inflation pressure and load limits by providing a consistent and predictable place for this information.

5. Owner's Manual

The agency proposes that owner's manuals for light vehicles contain discussion of the following five subject areas:

1. Tire labeling, including a description and explanation of

(a) each marking on the tire,

(b) locating information that will aid consumers in identifying tires subject to a recall campaign, and

(c) the TIN;

2. Recommended tire inflation pressure, including a description and explanation of

(a) recommended cold tire inflation pressure,

(b) the vehicle placard and tire inflation pressure label required in Federal Motor Vehicle Safety Standard No. 110 and their location in the vehicle,

(c) the adverse safety consequences of underinflation (including tire failure), and

(d) measuring and adjusting air pressure to achieve proper inflation;

3. Glossary of tire terminology, including ''cold tire pressure,'' ''maximum inflation pressure,'' and ''recommended inflation pressure,'' and all non-technical terms defined in S3 of FMVSS Nos. 110 & 139;

4. Tire care, including maintenance and safety practices; and

5. Vehicle load limits, including a description and explanation of

(a) locating and understanding load limit information, total load capacity, seating capacity, towing capacity, and cargo capacity,

(b) calculating total and cargo load capacities with varying seating configurations including quantitative examples showing/illustrating how the vehicle's cargo and luggage capacity decreases as the combined number and/or size of occupants increases,

(c) determining compatibility of tire and load capabilities,

(d) the adverse safety consequences of overloading on handling and stopping and on tires, and

(e) when to use either the recommended inflation pressure or a higher pressure (up to the maximum inflation pressure) based on the amount of load being carried by the tires. This inflation pressure and load limit information could, for example, be provided on an insert in the following format:

Figure 5.—Locating and Understanding Load Limit Information

Steps for Determining Correct Load Limit

(1) Locate the statement ''The combined weight of occupants and cargo should never exceed XXX pounds'' on your vehicle's placard.

(2) Determine the combined weight of the passengers that will be riding in your vehicle.

(3) Subtract the combined weight of the passengers from XXX pounds.

(4) The resulting figure equals the available amount of cargo and luggage load capacity. For example, if the ''XXX'' amount equals 1500 lbs. and there will be 5–150 lb passengers in your vehicle, the amount of available cargo and luggage load capacity is 750 lbs. (1500 − 750 (5 × 150) = 750 lbs.)

(5) Determine the combined weight of luggage and cargo being loaded on the vehicle. That weight may not safely exceed the available cargo and luggage load capacity calculated in Step 4.

(6) If your vehicle will be towing a trailer, load from your trailer will be transferred to your vehicle. Consult this manual to determine how this may reduce the available cargo and luggage load capacity of your vehicle.

(7) A higher inflation pressure (up to the maximum inflation pressure) may be necessary to carry safely the combined weight of the passengers, cargo and luggage being carried in your vehicle. Consult this manual to determine whether a higher inflation pressure is necessary.

The agency requests comments on whether the statements in Figure 5 should be required to be included verbatim in owner's manual and on how to make those statements as vehicle owner friendly as possible.

Some commenters on the ANPRM indicated that a majority of consumers rarely consult the owner's manual or have knowledge of the information that it contains. Commenters and focus group participants, however, agreed that the owner's manual should be a primary source of information for vehicle owners and, in particular, is a good location for general tire safety information. As discussed earlier in this document, survey research indicates that a significant minority of participants, up

to 45 percent in some surveys, cites the owner's manual as the best source of information concerning proper tire inflation pressure.

The agency's review of a limited number of owner's manuals revealed that the amount and type of information provided in these documents varies widely. Based on this observation, as well as the ANPRM comments and focus group results, the agency believes that a single, reliable source containing the proposed required information for the tires and tire safety information listed above would aid consumers in properly maintaining their tires and adhering to load limits.

C. Other Issues

1. FMVSS Nos. 110 and 120

The purpose of FMVSS Nos. 110 and 120 is to provide safe operational performance by ensuring that vehicles to which they apply are equipped with tires of adequate load rating and rims of appropriate size and type designation. FMVSS No. 110 currently applies to passenger cars and FMVSS No. 120 currently applies to vehicles other than passenger cars including motorcycles and trailers.

The agency proposes that FMVSS Nos. 110 and 120 be revised to correspond with the applicability of the new light vehicle tire standard. FMVSS No. 110 would include passenger cars and other light vehicles with a GVWR of 10,000 pounds or less. Therefore, most SUVs, vans, trailers, and pickup trucks would be required to comply with the same tire selection and rim requirements as passenger cars. FMVSS No. 120 will continue to apply to vehicles over 10,000 pounds GVWR and motorcycles.

Most current requirements of FMVSS No. 110 would be retained, including S4.2.2, which establishes a linkage between the vehicle normal load [26] and the load specified for the high-speed test in FMVSS No. 109.[27] S4.2.2 will be extended to cover SUVs, vans, trailers, and pickup trucks for the first time, which means that P-metric and LT tires used on these vehicles will have a load reserve similar to P-metric tires used on passenger cars.

The proposal also would extend S4.4.1(b) of FMVSS No. 110, which requires that each rim shall retain a deflated tire in the event of a rapid loss of inflation pressure from a vehicle speed of 97 km/h until the vehicle is stopped with a controlled braking operation, to light trucks and vans for the first time.

2. Rim Size and Type Designation for Light Trucks and Multipurpose Passenger Vehicles

Currently, the rim size and type designation label information requirements for light trucks and multipurpose passenger vehicles (MPVs) (which include SUVs) are specified in S5.3.2 of FMVSS No. 120. Light trucks and MPVs, unlike passenger cars, may be outfitted with different sized rims which would require different size tires and recommended inflation pressures for those tires. Under this proposal, the rim size and designation label requirement on the certification label would be added to FMVSS No. 110 for all light vehicles to which FMVSS No. 120 is presently applicable. Rim information would not, however, appear on the proposed vehicle placard or tire inflation pressure label.

3. Maximum Permissible Inflation Pressure

The agency is not proposing to remove or to revise the requirement for the maximum permissible inflation pressure marking on the tire, except to extend this requirement to tires for use on all light vehicles with a GVWR of 10,000 pounds or less, except LSVs and motorcycles.[28]

Commenters on the ANPRM and survey data noted that misunderstanding as to the meaning of maximum permissible inflation pressure does exist among consumers. Consumers often confuse the maximum permissible inflation pressure labeled on the tire for the recommended inflation pressure labeled on the vehicle placard. Nevertheless, most commenters did not recommend deleting this labeling requirement. Several commenters to the docket suggested adding information to the tire to distinguish the maximum permissible inflation pressure from the recommended inflation pressure. However, most expressed the view that improved consumer information would be the most effective means to correct the misunderstanding. The agency believes that it would be less effective to require tire manufacturers to add additional language to the sidewall to clarify the distinction between maximum inflation pressure and recommended inflation pressure. Sidewalls are becoming progressively smaller with the advent of low profile tires and requiring additional information in this already crowded space could cause greater consumer confusion.

Several commenters and focus group participants also noted that the maximum inflation pressure provides a failsafe guideline for tire inflation. The agency concurs that the greatest likelihood of tire failure results from underinflation. Additionally, the inflating of tires to the maximum inflation pressure while ''warm'' (i.e., after being driven for any amount of time) will most likely result in the tires being inflated to an amount below the maximum inflation pressure because the warm tire will register a higher inflation pressure than when the tire is measured when ''cold'' (not driven for at least three hours).

The agency also anticipates that improvements in the tire placard, standardizing the placard location, and an expanded consumer information program would reduce the number of consumers who mistake the maximum inflation pressure for the recommended inflation pressure.

4. UTQGS

Several commenters on the ANPRM questioned the utility of the UTQGS ratings to consumers and suggested that they be repealed. Other commenters recommended extending the applicability of UTQGS to additional categories of tires, e.g., mud and snow. One commenter suggested that temperature grades could be eliminated since they are redundant with speed rating information.[29] Since the TREAD Act imposed an 18-month deadline on this rulemaking, the agency does not have sufficient time to study and analyze the issues involved with proposing revisions to the UTQGS. Additionally, the UTQGS is statutorily mandated (see 49 U.S.C. 30123(b). The agency, in a future rulemaking, may propose to revise some or all of the grading requirements in Part 575.104, Uniform Tire Quality Grading Standards.

5. Consumer Information Campaign

In conjunction with the proposals discussed above and in response to the TREAD Act, the agency is also launching a consumer information

[26] Vehicle normal load on the tire means that load on an individual tire that is determined by distributing to each axle its share of the curb weight, accessory weight, and normal occupant weight and dividing by 2.

[27] This, under the proposed high speed test, would ensure at least a 15 percent load reserve (high speed test load proposed is 85 percent) when the vehicle is operated at normal load.

[28] FMVSS No. 119 does not contain a requirement that the maximum permissible inflation pressure be labeled on new pneumatic tires for vehicles other than passenger cars.

[29] The speed rating of a tire is generally indicated on the tire although not required by either FMVSS Nos. 109 and 119.

campaign addressing tire safety and maintenance. Consumer information campaigns are an institutionalized part of NHTSA's statutory mandate and operating practices. Quantifiable data confirming the crash reduction effectiveness of these programs is minimal, as funding does not exist to perform the evaluations necessary to establish this level of effectiveness. However, the successes of increased seat belt use, greater air bag knowledge, reduced drunk driving, knowledge of star ratings, vastly increased NCAP web site use, knowledge of rollover dangers, greater knowledge of child safety issues, and increased dissemination of the brochures ''Buying A Safer Car'' and ''Buying a Safer Car For Child Passengers'' demonstrate that the agency's consumer information programs are effective in increasing public awareness of safety issues and, consequently, reducing deaths and injuries.

6. Point-of-Sale Information

The agency, as part of this rulemaking, does not propose to require dealers to provide point-of-sale tire information. The agency does not possess evidence that point-of-sale information would prove more successful than consumer information campaigns at educating the consumer concerning tire safety. Therefore, it cannot presently justify the additional costs to manufacturers and dealers of such a requirement. If the agency's consumer information campaign proves unsuccessful at increasing the public awareness of tire safety, the agency could reexamine this issue in a future rulemaking.

7. Vehicle Certification Labels

Vehicle certification label requirements, contained in part 567, would not be revised by this proposal except to reference the proposed FMVSS No. 110, as well as FMVSS No. 120, in § 567.4 concerning tire-rim combinations for light trucks and MPVs, and to require that the label contain the tire-rim combination installed as original equipment on the vehicle by the vehicle manufacturer.

8. International Harmonization

NHTSA generally supports international harmonization in cases where such harmonization is consistent with its statutory mandate to ensure motor vehicle safety. The tire industry has become global in manufacturing, marketing, and sales. In 1999, domestic tire manufacturers exported 22.3 million passenger car tires and 3.8 million light truck tires to foreign markets. In the same year, the U.S. imported 45 million passenger car tires and 5.4 million light truck tires from foreign sources. It is apparent, therefore, that maximum harmonization of tire requirements would benefit both U.S. and foreign vehicle and tire manufacturers.

At this time, however, the overall need for safety precludes, in NHTSA's view, the adoption of foreign or international labeling provisions. The labeling requirements contained in GTS–2000 and ECE 30 and 54 do not contain counterparts for some of the provisions in our current requirements, e.g., labeling of maximum permissible inflation pressure on the tire, and in our proposed requirements, e.g., labeling of passenger and cargo weight on the vehicle. Additionally, Canada's tire labeling provisions mirror our current requirements but do not contain the novel labeling requirements proposed in this document.

Furthermore, we believe the two labeling requirements contained in GTS–2000 and ECE 30 and 54, speed-category symbol and load index [30], have not been shown to communicate information effectively to the U.S. public.

The following chart illustrates the rated speed in km/h for each speed symbol. ''ZR'' is an open-ended speed category for tires with a maximum speed capability above 240 km/h, but is also used specifically for tires having a maximum speed capability above 300 km/h.

Speed symbol	Rated speed—km/h	Speed symbol	Rated speed—km/h
F	80	R	170
G	90	S	180
J	100	T	190
K	110	U	200
L	120	H	210
M	130	V	240
N	140	W	270
P	150	Y	300
Q	160	ZR	> 300

The load index requirement in GTS–2000 and ECE Regulation Nos. 30 and 54, in contrast to our current requirement to provide the maximum load rating on the sidewall of the tire, provides a value which is not intuitive to consumers and would require a vehicle operator to look to the owner's manual or standard to determine the actual tire maximum load.

[30] Under these regulations, the speed-category symbol and the load index are to be placed together near the size designation. For example, the sidewall would contain the size designation ''PS15/65R 89H'' where ''H'' is the speed-category symbol and ''89'' is the load index.

9. Organization of Tire Labeling Information

Some comments on the ANPRM suggested improving the organization and coherency of the tire information that currently appears in more than six different standards and sections on tire information. The agency will try to develop a simple brochure that explains to the public what the tire information requirements are and what they mean.

VII. Request for Comments on Particular Issues

(1) 49 U.S.C. 30123 states: ''(c) Maximum load standards. The Secretary shall require a motor vehicle to be equipped with tires that meet maximum load standards when the vehicle is loaded with a reasonable amount of luggage and the total number of passengers the vehicle is designed to carry.'' Should NHTSA define or specify what a ''reasonable amount of luggage'' is for a vehicle with an occupant in every designated seating position? The agency requests comments on this question. Please be specific in your response and provide a basis for your answer.

(2) Tire manufacturer commenters pointed to GTS–2000 and ECE Regulations 30 and 54 to address issues raised in the ANPRM. These commenters generally cited decreased costs and increased information consistency as a benefit of minimized regulatory divergence. These commenters, however, did not cite specific labeling requirements in these international and foreign standards and did not discuss the safety impacts from the adoption of these standards. NHTSA requests comments on which, if any, labeling requirements in any foreign or international standard should be considered by NHTSA and why. Please be specific in your response and provide a basis for your answer.

(3) Most commenters agree that adding additional required information to the tire sidewall is unwarranted or challenging due to space and readability concerns. Additionally, some commenters have indicated that certain information added at the option of the manufacturer, e.g., warranty information, is not useful to consumers. Based on these sentiments, should the agency consider prohibiting some or all non-required information from being labeled on the tire sidewalls? Please be specific in your response and provide a basis for your answer.

VIII. Benefits

NHTSA believes that this proposal would be effective in increasing public

awareness of tire safety, particularly the understanding and maintenance of proper tire inflation and load limits. This proposal will also enable consumers to more easily identify the TIN and other tire information for recalls and other notifications. The proposal will standardize the location and content of important information relating to proper inflation and load limits and other tire safety concerns. These measures, by increasing consumer knowledge and awareness, should result in reduced tire failures and tire related crashes, and therefore fewer deaths and injuries.

IX. Costs

NHTSA believes that this proposal would result in minimal costs for tire manufacturers. Tire labeling information is already required for tires for light vehicles. Therefore, the cost of molding this information should be the same, even if the information is changed. NHTSA estimates that the added cost for labeling tires under this proposal would equal $0.01 per tire or less. Since 300 million tires are produced per year the total annual cost for the proposed tire labeling requirements would equal $3 million ($0.01 × 300 million).

NHTSA also believes that this proposal would result in minimal costs for vehicle manufacturers and consumers. Vehicle placard information is already required for passenger cars and owner's manual information is already required for light vehicles. Therefore, the costs of printing a new or revised vehicle placard and/or tire inflation pressure label, the owner's manual pages, and installation of the placard and/or label should be minimal. The only cost would be a one time cost to change production for the new vehicle placard and/or tire inflation pressure label, the application of the vehicle placard and/or tire inflation pressure label to all light vehicles, not only passenger cars, and the new owner's manual pages.

NHTSA estimates that the cost of a new vehicle placard or tire inflation pressure label would be $0.01 or less per vehicle for producing the new placard or label and $0.04 for the application of the new placard or label. NHTSA estimates that with approximately 100% of light trucks, MPVs, and trailers (9 million annually) utilizing both the placard and label and 30% of passenger cars (.30 × 8 million = 2.4 million) utilizing both the placard and label, the total costs for the vehicle placard and tire inflation pressure label proposals would equal $626,000.

For the owner's manual information, NHTSA estimates that one time writing and editing costs would equal $12,000 ((8 hours labor × $30.00 per hour) x (50 owner's manuals (25 manufacturers, 2 manuals each (one for passenger cars and one for light trucks, MPVs, or trailers)))). The print and layout costs per manual are estimated at $0.10 per manual. Since 17 million light vehicles are produced annually, the total print and layout costs for the manuals equal $1,870,000 with an overprint margin of 10 percent, and the total owner's manual costs equal $1,882,000.

Adding the total tire and vehicle manufacturing costs together results in approximately $5.5 million in annual costs. The agency requests comment on this estimate. Please be specific in your response and provide a basis for your answer.

X. Lead Time

Section 11 of the TREAD Act requires the agency to issue a final rule on this tire labeling proposal by June 1, 2002. Congress did not set a date by which all covered tires and vehicles would have to meet the improved tire information requirements. The agency proposes to phase-in compliance for tires according to the following schedule: All P-metric tires manufactured on or after September 1, 2003, and all LT tires manufactured on or after September 1, 2004. Additionally, all light vehicles manufactured on or after September 1, 2003 would have to comply with the final rule. This proposed lead time would be consistent with the lead time proposed for the tire performance upgrade.

XI. Rulemaking Notices and Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures. The proposal is likely to result in expenditure by tire and automobile manufacturers of approximately $5.5 million in annual costs. As explained above, NHTSA believes that this proposal would result in minimal cost for manufacturers and consumers. As this is a proposal to change existing requirements, the only cost would be a one-time cost to change production to the new tire, vehicle placard and/or tire inflation pressure label, or vehicle owner's manual pages and a minimal costs for installation of the vehicle placard and/or tire inflation pressure label to all light vehicles.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small business, small organizations and small governmental jurisdictions. I hereby certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities.

The proposed rule would affect motor vehicle manufacturers and tire manufacturers. The agency does not believe that any of the tire manufacturers are small businesses. However, there are about 1,000 retread manufacturers in the United States, of which about 750 deal with light vehicle tires that will in some small way be impacted by this rule. Most of these retreaders are small businesses.

NHTSA estimates that there are only about four small passenger car and light truck vehicle manufacturers in the United States. These manufacturers serve a niche market. The agency believes that small manufacturers manufacture less than 0.1 percent of total U.S. passenger car and light truck production per year.

The agency requests comments concerning the economic impact of the proposed rule on retreaders and small vehicle manufacturers.

C. National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments, as it is here.

This proposal is likely to result in expenditure by tire and automobile manufacturers of approximately $5.5 million in annual costs.

F. Civil Justice Reform

This proposal would not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

This proposal contains the following ''collections of information,'' as that term is defined in 5 CFR Part 1320 Controlling Paperwork Burdens on the Public:

Tire and Vehicle Placard Labeling Requirements—The Department of Transportation is submitting the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Tires and Rims Labeling, and Vehicle Placard Requirements.

Type of Request: Additional collection of information for an existing collection.

OMB Clearance Number: 2127–0503.

Affected Public: The tire-labeling respondents are manufacturers and retreaders of tires. The agency estimates that there are about 8 such new tire manufacturers and 1200 retread manufacturers. The placard labeling respondents are manufacturers of MPVs covered by FMVSS 571.120. The agency estimates that there are 935 vehicle manufacturers affected by this collection.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information: NHTSA estimates that the total annual hour burden is 111,539 hours for tire labeling and 25,184 for vehicle placard requirements.

Estimated Costs: NHTSA estimates the total cost annual burden for tire labeling to be $3,000,000. The estimated total cost annual burden for vehicle placards is $626,000. No additional resources would be expended by manufacturers to gather additional information because they already compile this data for their own uses.

Summary of the Collection of Information: The provisions of the proposed amendments herein requiring manufacturers to provide certain information on both sidewalls of tires, e.g., the TIN, and certain information on a placard or label for vehicles other than passenger cars, e.g., vehicle capacity weight, seating capacity, for the benefit of consumers are considered to be third-party information collection requirements as defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

Description of the Need for the Information and Proposed Use of the Information: The provisions of the proposed amendments herein requiring manufacturers to provide certain information on both sidewalls of tires, e.g., the TIN, and certain information on a placard or label for vehicles other than passenger cars, e.g., vehicle capacity weight, seating capacity, are for the benefit of consumers. NHTSA requests comments on the agency's estimates of the total annual hour and cost burdens resulting from this collection of information. These comments must be received on or before February 19, 2002.

Vehicle Owner's Manual Requirements—The Department of Transportation is submitting the following information collection request to OMB for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Consolidated Vehicle Owner's Manual Requirements of Motor Vehicles and Motor Vehicle Equipment.

Type of Request: Additional collection of information for an existing collection.

OMB Clearance Number: 2127–0541.

Affected Public: The respondents are manufacturers of motor vehicles with a gross vehicle weight rating of 10,000 pounds or less, except for motorcycles and LSVs. The agency estimates that there are 50 model lines for which there are owner's manuals. It is estimated that about 25 vehicle manufacturers are affected by this collection.

Estimate of the Total Annual Reporting and Record Keeping Burden Resulting from the Collection of Information: NHTSA estimates that the total annual hour burden is 400 hours for this information collection.

Estimated Costs: NHTSA estimates the total cost annual burden for revising the owner's manuals to be $1,882,000.

Summary of the Collection of Information: The provisions of the proposed amendments herein requiring manufacturers to provide information in owners' manuals explaining tire and vehicle load limit information for the benefit of consumers are considered to be third-party information collection requirements as defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

Description of the Need for the Information and Proposed Use of the Information: The provisions of the proposed amendments herein requiring manufacturers to provide information in owners' manuals explaining tire and vehicle load limit information are for the benefit of consumers. NHTSA requests comments on the agency's estimates of the total annual hour and cost burdens resulting from this collection of information. These comments must be received on or before February 19, 2002.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?

• Could we improve clarity by adding tables, lists, or diagrams?
• What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

XII. Submission of Comments

How Can I Influence NHTSA's Thinking on This Proposed Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide views on options we propose, to suggest new approaches we have not considered, provide new data, indicate how this proposed rule may affect you, or provide other relevant information. We welcome your views on all aspects of this proposed rule, but request comments on specific issues throughout this document. We grouped these specific requests near the end of the sections in which we discuss the relevant issues. Your comments will be most effective if you follow the suggestions below:

• Explain your views and reasoning as clearly as possible.
• Provide solid technical and cost data to support your views.
• If you estimate potential costs, explain how you arrived at the estimate.
• Tell us which parts of the proposal you support, as well as those with which you disagree.
• Provide specific examples to illustrate your concerns.
• Offer specific alternatives.
• Refer your comments to specific sections of the proposal, such as the units or page numbers of the preamble, or the regulatory sections.
• Be sure to include the name, date, and docket number with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

XII. Proposed Regulatory Text

List of Subjects in 49 CFR Parts 567, 571, 574, and 575

Certification, Consumer information, Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, we propose to amend 49 CFR parts 567, 571, 574 and 575 as follows:

PART 567—CERTIFICATION

1. The authority citation for part 567 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, 33108, and 33109; delegation of authority at 49 CFR 1.50.

2. Part 567 would be amended by revising § 567.4(h)(2) as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(h) * * *

(2) (For multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles.) The manufacturer may, at its option, list more than one GVWR-GAWR-tire-rim combination on the label as long as the listing contains the tire-rim combination installed as original equipment on the vehicle by the vehicle manufacturer and conforms in content and format to the requirements for the Tire-rim-inflation information set

forth in § 571.120, § 571.129 and § 571.139 of this chapter.

* * * * *

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

3. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 2011, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

4. Section 571.110 would be amended by revising its heading and S2, S4.3 and S4.3.1, by adding S4.3.2, and by adding Figure 1 and Figure 2 at the end of Section 571.110, to read as follows:

§ 571.110 Standard No. 110—Tire selection and rims for motor vehicles with a GVWR of 10,000 pounds or less.

* * * * *

S2. Application. This standard applies to motor vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, except for motorcycles, and to non-pneumatic spare tire assemblies for use on those vehicles.

S4. * * *

S4.3 Placard. Each vehicle shall show the information specified in S4.3 (a) through (f) on a placard permanently affixed to the B-pillar, or, if the vehicle does not contain a B-pillar, the drivers side door edge. This information shall be in the English language, lettered in block capitals and numerals not less than 2.4 millimeters high and conform in size, color, and format as set forth in Figure 1 in S4.3. At the manufacturer's option, the information specified in S4.3(c) and (d) may be shown, alternatively, on a tire inflation pressure label, and conform in size, color, and format as set forth in Figure 2 in S4.3, permanently affixed and proximate to the placard required by this paragraph. The information specified in S4.3(e) shall be shown on both the vehicle placard and on any existing tire inflation pressure label in the format and color scheme set forth in Figures 1 and 2.

(a) Vehicle capacity weight expressed as ''THE COMBINED WEIGHT OF OCCUPANTS AND CARGO SHOULD NEVER EXCEED XXX POUNDS'';

(b) Designated seated capacity (expressed in terms of total number of occupants and number of occupants for each seat location);

(c) Vehicle manufacturer's recommended cold tire inflation pressure, subject to the limitations of 4.3.2;

(d) Tire size designation for the tire installed as original equipment on the vehicle by the vehicle manufacturer;

(e) ''TIRE INFORMATION'';

(f) ''SEE OWNER'S MANUAL FOR ADDITIONAL INFORMATION''; and

(g) For a vehicle equipped with a non-pneumatic assembly, the tire identification code with which that assembly is labeled pursuant to the requirements of S4.3(a) of § 571.129, New Non-Pneumatic Tires for Passenger Cars.

S4.3.1 Additional labeling information for vehicles other than passenger cars. Each vehicle shall show the size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for the tire appropriate for use on that vehicle, including the tire installed as original equipment on the vehicle by the vehicle manufacturer, after each GAWR listed on the certification label required by § 567.4 or § 567.5 of this chapter. This information shall be in the English language, lettered in block capitals and numerals not less than 2.4 millimeters high and in the following format:

Truck Example—Suitable Tire-Rim Choice
GVWR: 2,441 kilograms (5381 pounds)
GAWR: Front—1,299 kilograms (2,864 pounds) with P265/70R16 tires, 16 x 8.0 rims at 240 kPa (36 psi) cold single.
GAWR: Rear—1,142 kilograms (2,864 pounds) with P265/70R16 tires, 16 x 8.00 rims, at 245 kPa (36 psi) cold single.

S4.3.2 No inflation pressure other than the maximum permissible inflation pressure may be shown unless—

(a) It is less than the maximum permissible inflation pressure;

(b) It is appropriate for the load limits as calculated in accordance with S4.2; and

(c) The tire load rating specified in a submission by an individual manufacturer, pursuant to S4.1.1(a) of § 571.139 or contained in one of the publications described in S4.1.1.(b) of § 571.139, for the tire size at that inflation pressure is not less than the vehicle maximum load and the vehicle normal load.

* * * * *

BILLING CODE 4910–59–P

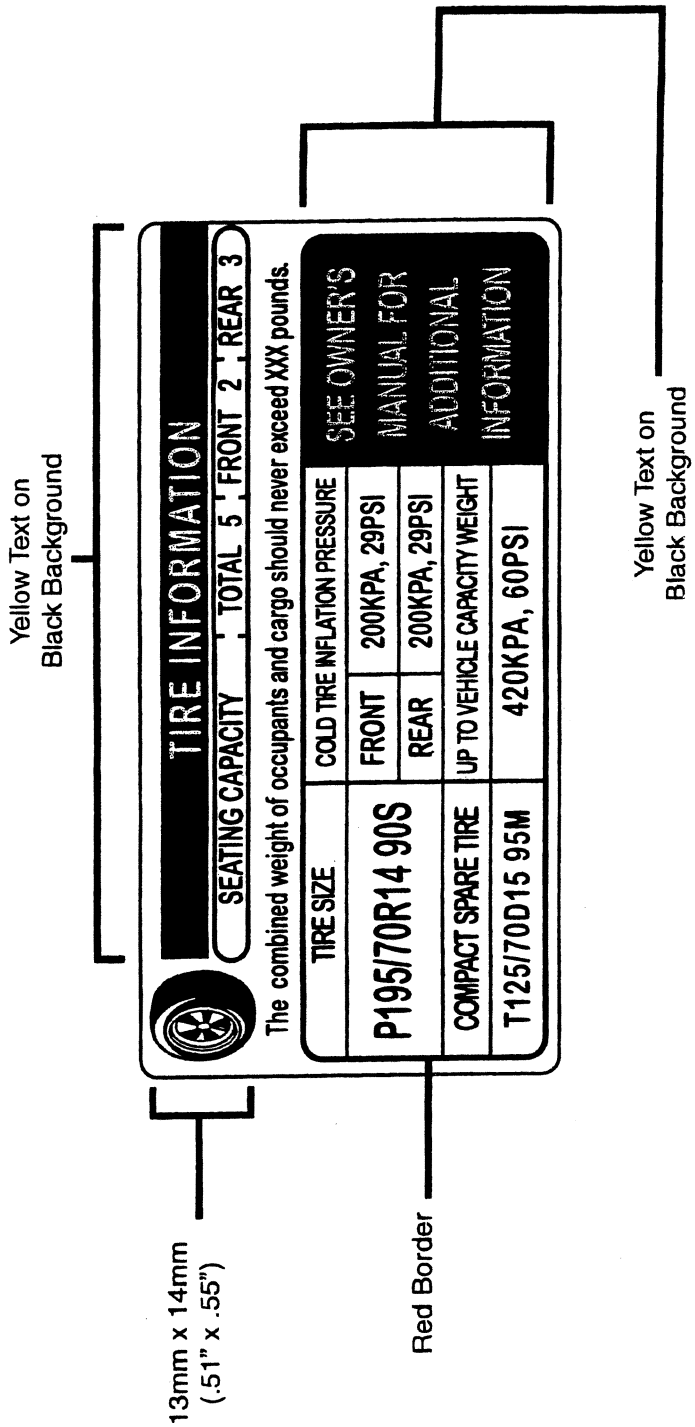

Figure 1: Vehicle Placard

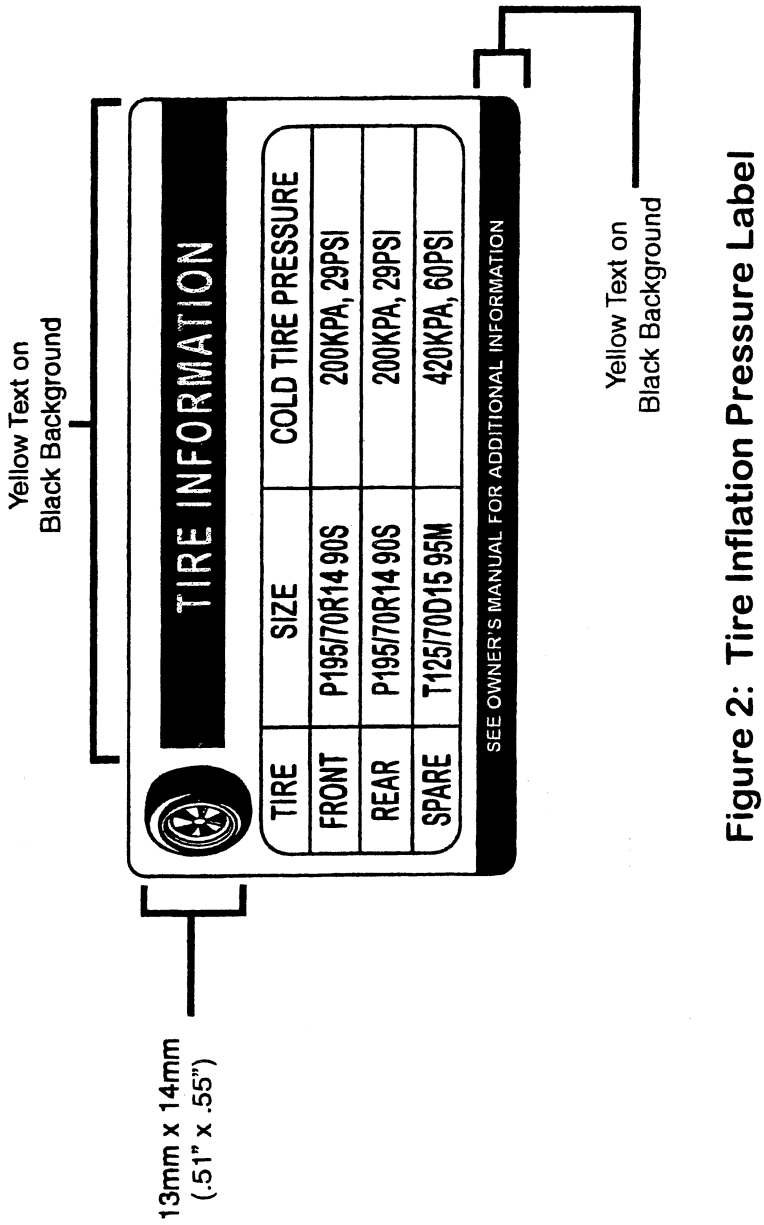

Figure 2: Tire Inflation Pressure Label

BILLING CODE 4910–59–C

5. Section 571.117 would be amended by revising S6.3 (including removing Table 1 and the undesignated paragraph following S6.3(h)), to read as follows:

§ 571.117 Standard No. 117; Retreaded pneumatic tires.

* * * * *

S6. * * *

S6.3. Labeling. Each retreaded tire shall comply with the requirements of S5.5. of § 571.139.

* * * * *

6. Section 571.120 would be amended by revising its heading, and S3 to read as follows:

§ 571.120 Standard No. 120; Tire selection and rims for motor vehicles with a GVWR of more than 10,000 pounds.

* * * * *

S3. Application. This standard applies to motor vehicles with a gross vehicle weight rating (GVWR) of more than 10,000 pounds and motorcycles, to rims for use on those vehicles, and to non-pneumatic spare tire assemblies for use on those vehicles.

* * * * *

7. Section 571.129 would be amended by revising S4.3 to read as follows:

§ 571.129 Standard No. 129; New non-pneumatic tires for passenger cars.

* * * * *

S4. * * *

S4.3. Labeling Requirements. Each new non-pneumatic tire shall comply with the requirements of S5.5 of § 571.139.

* * * * *

8. Section 571.139 would be added to read as follows:

§ 571.139 Standard No. 139; New pneumatic tires for motor vehicles with a GVWR of 10,000 pounds or less.

S1. Scope and purpose. This standard specified tire dimensions, test requirements, labeling requirements, and defines tire load ratings.

S2. Application. This standard applies to new pneumatic tires for use on motor vehicles (other than motorcycles) that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less and that were manufactured after 1975.

S3. Definitions. [Reserved]

S4. Tire and rim matching information.

S4.1. Each manufacturer of tires shall ensure that a listing of the rims that may be used with each tire that it produces is provided to the public in accordance with S4.1.1 and S4.1.2.

S4.1.1 Each rim listing for a tire shall include dimensional specifications and a diagram of the rim and shall be in one of the following forms:

(a) Listed by manufacturer name or brand name in a document furnished to dealers of the manufacturer's tires, to any person upon request, and in duplicate to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; or

(b) Contained in publications, current at the date of manufacture of the tire or any later date, of at least one of the following organizations:

(1) The Tire and Rim Association.

(2) The European Tyre and Rim Technical Organization.

(3) Japan Automobile Tire Manufacturers' Association, Inc.

(4) Tyre & Rim Association of Australia.

(5) Associacao Latino Americana de Pneus e Aros (Brazil).

(6) South African Bureau of Standards.

S4.1.2 A listing compiled in accordance with paragraph (a) of S4.1.1 need not include dimensional specifications or a diagram of a rim whose dimensional specifications and diagram are contained in a listing published in accordance with paragraph (b) of S4.1.1.

S4.2. Information contained in a publication specified in S4.1(b) that lists general categories of tires and rims by size designation, type of construction, and/or intended use, shall be considered to be manufacturer's information pursuant to S4.1 for the listed tires, unless the publication itself or specific information provided according to S4.1(a) indicates otherwise.

S5. General requirements. [Reserved]

S5.5 Tire Markings. Except as specified in paragraphs (a) through (i) of this S5.5, each tire shall be marked on each sidewall with the information specified in S5.5 (a) through (e) and on one sidewall with the information specified in S5.5 (f) through (i). The markings shall be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area which is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, those markings shall appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings shall be in letters and numerals not less than 0.078 inch high and raised above or sunk below the tire surface not less than 0.015 inch. The tire identification and DOT symbol labeling shall comply with part 574 of this chapter.

(a) The symbol DOT, which shall constitute a certification that the tire conforms to applicable Federal motor vehicle safety standards;

(b) The tire identification number required by part 574 of this chapter;

(c) The tire size designation as listed in the documents and publications specified in S4.1.1;

(d) The maximum permissible inflation pressure;

(e) The maximum load rating;

(f) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire;

(g) The actual number of plies in the sidewall, and the actual number of plies in the tread area if different;

(h) The words ''tubeless'' or ''tube type'' as applicable; and

(i) The word ''radial'' if the tire is a radial ply tire.

S5.5.1 Each tire shall be labeled with the name of the manufacturer, or brand name and number assigned to the manufacturer in the manner specified in part 574.

S5.5.2 [Reserved]

S5.5.3 If the maximum inflation pressure of a tire is 240, 280, 290, 300, 330, 340, 350 or 390 kPa, then:

(a) Each marking of that inflation pressure pursuant to S5.5(d) shall be followed in parenthesis by the equivalent psi, rounded to the next higher whole number; and

(b) Each marking of the tire's maximum load rating pursuant to S5.5(e) in kilograms shall be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole number.

S5.5.4 If the maximum inflation pressure of a tire is 420 kPa (60 psi), the tire shall have permanently molded into or onto both sidewalls, in letters and numerals not less than ½ inch high, the words ''Inflate to 60 psi'' or ''Inflate to 420 kPa (60 psi).'' On both sidewalls, the words shall be positioned in an area between the tire shoulder and the bead of the tire. However, in no case shall the words be positioned on the tire so that they are obstructed by the flange of any rim designated for use with that tire in this standard or in Standard No. 110 (§ 571.110 of this part).

S6. Test procedures, conditions and performance requirements. [Reserved]

S7. [Reserved]

PART 574—TIRE IDENTIFICATION AND RECORD KEEPING

9. The authority citation for part 574 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, 1411–1420, 1421; delegation of authority at CFR 1.50.

10. Section 574.5 would be amended by revising paragraphs (b) and (d), and Figures 1 and 2 to read as follows:

§ 574.5 Tire identification requirements.

* * * * *

(b) *Second grouping.* For tires produced or retreaded on and after September 1, 2003, the second grouping, consisting of four numerical symbols, must identify the week and year of manufacture. The first two symbols must identify the week of the year by using ''01'' for the first full calendar week in each year, ''02'' for the second full calendar week, and so on. The calendar week runs from Sunday through the following Saturday. The final week of each year may include not more than 6 days of the following year. The third and fourth symbols must identify the year. Example: 0101 means the 1st week of 2001, or the week beginning Sunday, January 7, 2001, and ending Saturday, January 13, 2001.

* * * * *

(d) *Fourth grouping.* For new tires, the fourth group, consisting of no more than 2 symbols, may be used at the option of the manufacturer, to identify the tire size. For a new non-pneumatic tire or a non-pneumatic tire assembly, the fourth group, of not more than two symbols, shall be used to identify the non-pneumatic tire identification code. For retreaded tires, the fourth group, of no more than two symbols, shall identify the retread matrix in which the tire was processed or a tire size code if a matrix was not used to process the retreaded tire. Each new tire manufacturer and retreader shall maintain a record of each symbol used, with the corresponding matrix or tire size, and shall provide such record to the NHTSA upon written request.

BILLING CODE 4910–59–P

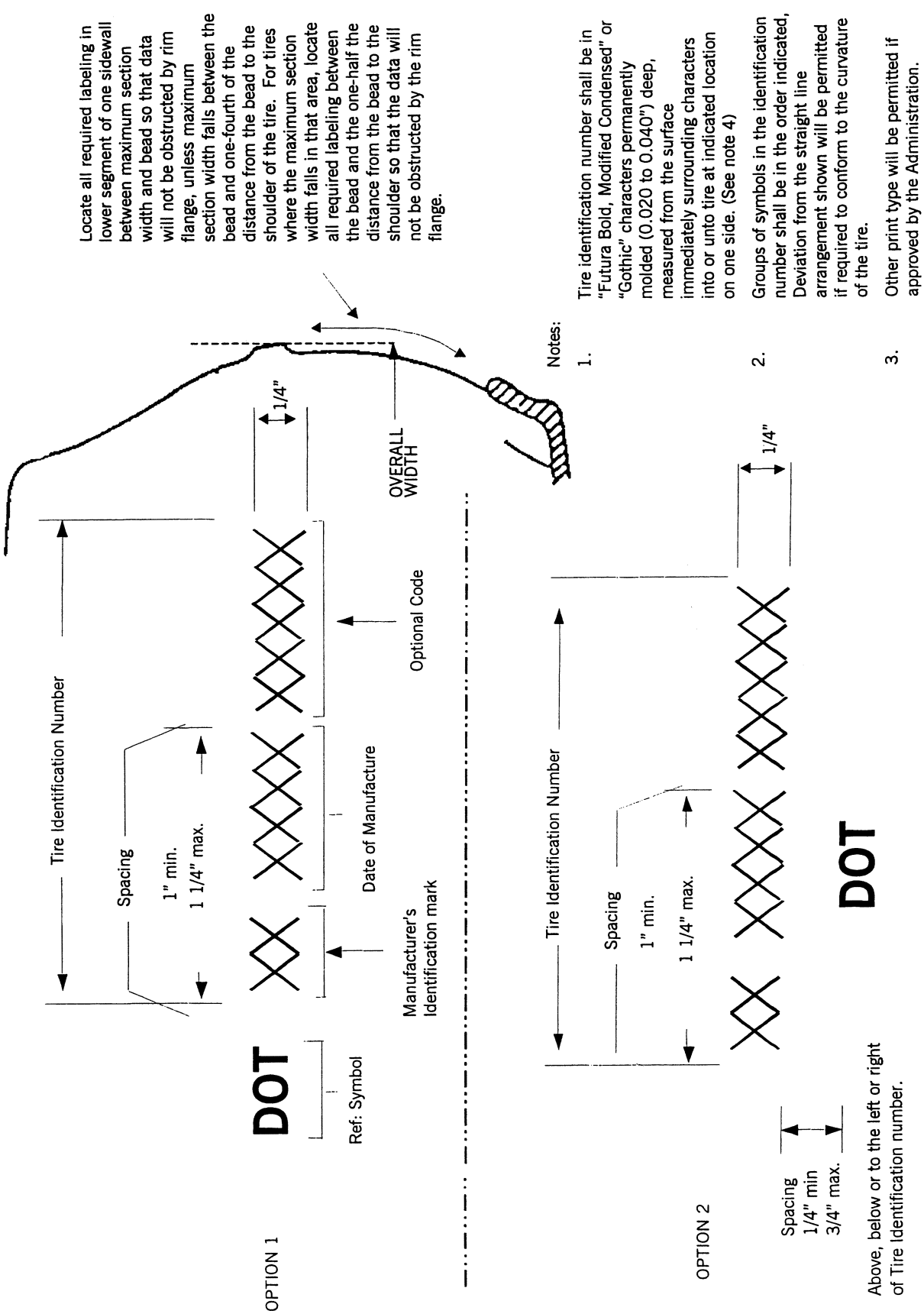

FIGURE 1: IDENTIFICATION NUMBER FOR NEW TIRES

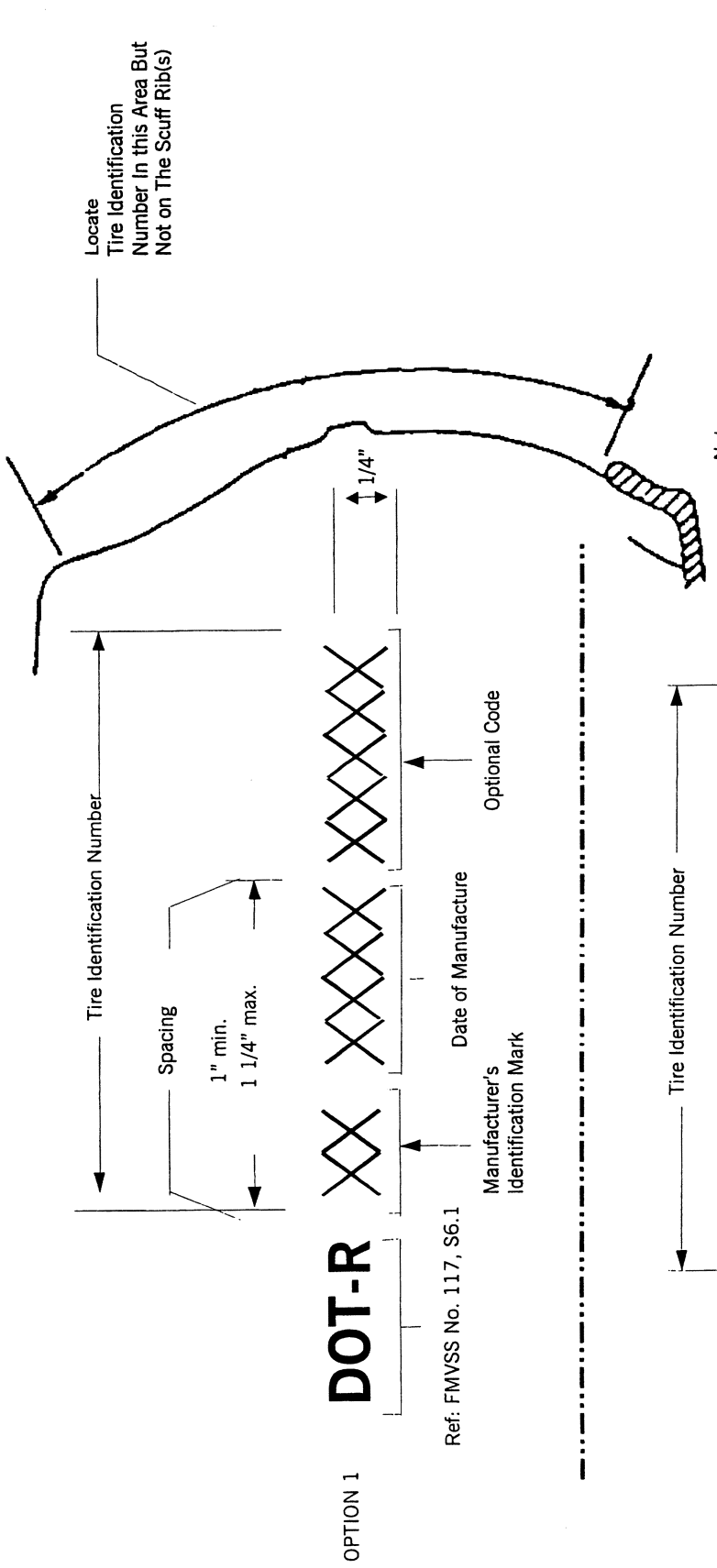

FIGURE 2. IDENTIFICATION NUMBER FOR RETREADED TIRES

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* * * * *

PART 575—CONSUMER INFORMATION REGULATIONS

11. The authority citation for part 575 would continue to read as follows:

Authority: 15 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at CFR 1.50.

12. Section 575.6 would be amended by adding paragraph (a)(4) to read as follows:

§ 575.6 Requirements

* * * * *

(a)(4) At the time that a motor vehicle with a GVWR of 10,000 pounds or less, except a motorcycle or low speed vehicle, manufactured on or after September 1, 2003 is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide to the purchaser, in writing in the English language and not less than 10 point type, a discussion of the items specified in paragraphs (a)(4) (i) through (v) of this section in the owner's manual, or, if there is no owner's manual, in a document.

(i) Tire labeling, including a description and explanation of each marking on the tires provided with the vehicle, including locating the Tire Identification Number (TIN);

(ii) Recommended tire inflation pressure, including a description and explanation of

(A) Recommended cold tire inflation pressure,

(B) The vehicle placard and tire inflation pressure label specified in Federal Motor Vehicle Safety Standard No. 110 and their location in the vehicle,

(C) Adverse safety consequences of underinflation (including tire failure), and

(D) Measuring and adjusting air pressure to achieve proper inflation;

(iii) Glossary of tire terminology, including ''cold tire pressure,'' ''maximum inflation pressure,'' and ''recommended inflation pressure,'' and all non-technical terms defined in S3 of FMVSS Nos. 110 & 139;

(iv) Tire care, including maintenance and safety practices;

(v) Vehicle load limits, including a description and explanation of

(A) Locating and understanding load limit information, total load capacity, seating capacity, towing capacity, and cargo capacity,

(B) Calculating total and cargo load capacities with varying seating configurations including quantitative examples showing/illustrating how the vehicle's cargo and luggage capacity decreases as the combined number and size of occupants increases,

(C) Determining compatibility of tire and load capabilities,

(D) Adverse safety consequences of overloading on handling and stopping and on tires, and

(E) When to use either the recommended inflation pressure or a higher inflation pressure (up to the maximum inflation pressure) based on the amount of load being carried by the tires. This information, for example, could be provided on an insert in the following format:

Steps for Determining Correct Load Limit

(*1*) Locate the statement ''The combined weight of occupants and cargo should never exceed XXX pounds'' on your vehicle's placard.

(*2*) Determine the combined weight of the passengers that will be riding in your vehicle.

(*3*) Subtract the combined weight of the passengers from XXX pounds.

(*4*) The resulting figure equals the available amount of cargo and luggage load capacity. For example, if the ''XXX'' amount equals 1500 lbs. and there will be 5–150 lb passengers in your vehicle, the amount of available cargo and luggage load capacity is 750 lbs. (1500 − 750 (5 × 150) = 750 lbs.)

(*5*) Determine the combined weight of luggage and cargo being loaded on the vehicle. That weight may not safely exceed the available cargo and luggage load capacity calculated in Step 4.

(*6*) If your vehicle will be towing a trailer, load from your trailer will be transferred to your vehicle. Consult this manual to determine how this reduces the available cargo and luggage load capacity of your vehicle.

(*7*) Under certain loading or driving conditions, a higher inflation pressure may be required. Consult your owner's manual for further information.

* * * * *

Issued: December 12, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–30989 Filed 12–13–01; 10:40 am]

BILLING CODE 4910–59–P

Federal Register

Wednesday,
December 19, 2001

Part III

Department of Education

Office of Elementary and Secondary Education and the Office of Vocational and Adult Education; Smaller Learning Communities Program; Notices

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education and the Office of Vocational and Adult Education; Smaller Learning Communities Program

AGENCY: Department of Education.

ACTION: Notice of final priorities, application requirements, and selection criteria for Fiscal Year (FY) 2001.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education and the Assistant Secretary for Vocational and Adult Education announce final priorities, application requirements, and selection criteria for the Smaller Learning Communities (SLC) program for fiscal year (FY) 2001.

EFFECTIVE DATE: These priorities, application requirements and selection criteria are effective January 18, 2002.

FOR FURTHER INFORMATION CONTACT: For information on the program and to download an application, you may access the SLC program web site at *www.ed.gov/offices/OESE/SLCP/.* If you have questions pertaining to the application, you may send an e-mail to *smallerlearningcommunities@ed.gov.* If you need further assistance and need to speak with someone in the SLC program, you may contact Andrew Abrams, (202) 260–7430, 330 C Street, SW., MES Bldg., Room 5512, Washington, DC 20202. You may also contact Diane Austin (202) 260–1280, 400 Maryland Ave., SW., Room 5C149, Washington, DC 20202–6200. Requests for applications may also be sent by fax to (202) 260–8969.

Individuals who use the telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed above.

Note: This notice of final priorities, application requirements, and selection criteria does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**. The notice inviting applications will specify the deadline date by which applications for an award must be mailed or hand-delivered to the Department.

Background

Research suggests that the positive outcomes associated with smaller schools stem from the schools' ability to create close, personal environments in which teachers can work collaboratively, with each other and with a small set of students, to challenge students and support learning. A variety of structures and complementary strategies are thought to provide important supports for smaller learning environments; some data suggest these approaches offer substantial advantages to both teachers and students (Ziegler 1993; Caroll 1994).

The Smaller Learning Communities program is authorized under section 10105 of part A of title X of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 8005). Title X, Part A authorizes the Secretary to support nationally significant programs and projects to: (1) Improve the quality of education; (2) assist all students in meeting challenging State content standards; and (3) contribute to achieving National Education Goals.

The purpose of the Smaller Learning Communities program is to support the planning, implementation, or expansion of small, safe, and successful learning environments in large public high schools through competitive grants to local educational agencies (LEAs). LEAs may apply on behalf of large high schools including large high schools funded by the Bureau of Indian Affairs (BIA schools). For the purposes of this program, a large high school is defined as a school that includes grades 11 and 12 and enrolls at least 1,000 students in grades 9 and above.

Methods for recasting large schools as a set of smaller learning communities are included in the Conference Report for the Consolidated Appropriations Act, 2000 [Pub. L. 106–113, H.R. Conference Report No. 106–479, at 1240 (1999)]. Such restructuring methods include establishing small learning clusters, ''houses,'' career academies, magnet programs, or schools-within-a-school. Strategies that complement a restructured large high school include block scheduling, freshman transition activities, advisory or adult advocate systems, academic teaming, multi-year groupings, and other innovations designed to create a more personalized high school experience for students and thus, improve student achievement.

In FY 2000, Congress appropriated $45 million, of which the Department awarded $42.3 million in support of 149 grants to local educational agencies. The Secretary awarded 84 one-year planning grants and 65 three-year implementation grants. A total of 349 schools, serving over 450,000 students, benefited during the first year of the program. The Secretary reserved the remaining $2,250,000 to fund national leadership activities.

Congress appropriated $125 million for this program in FY 2001. The Administration is not requesting funds for the Smaller Learning Communities program in FY 2002. Rather, the Administration is proposing a new Choice and Innovation State Grants program under which States and LEAs would have greater flexibility in using funds for activities, such as the creation of smaller learning communities, that will support educational reform and improvement.

Prospective applicants are encouraged to review the Program Web site for non-regulatory guidance, information about current grantees, and to review successful applications at: *www.ed.gov/offices/OESE/SLCP.* Written questions may be submitted through the Internet at: *smallerlearningcommunities@ed.gov.*

Public Comments: The Department published a notice of proposed priorities, application requirements, and selection criteria for this competition in the **Federal Register** on July 19, 2001, (66 FR 37871–37876).

In response to the Assistant Secretaries' invitation to comment, five parties submitted comments on the proposed priorities, application requirements, and selection criteria. An analysis of the comments and of the changes in the priorities, application requirements, and selection criteria since publication of the July 19, 2001, notice follows.

We discuss substantive issues under the priority, requirement, or criterion to which they pertain. Generally, we do not address technical changes, minor changes, and suggested changes the law does not authorize the Assistant Secretaries to make under the applicable statutory authority.

Analysis of Comments and Changes

Competitive Priorities

Comment: A commenter suggested that giving competitive preference to existing Smaller Learning Communities planning grantees is unfair to schools that have had to progress through the planning process on their own, without additional federal funds to do so.

Discussion: We agree that current Smaller Learning Communities planning grantees should not receive a competitive priority when they apply for implementation grants, based solely on their status as a current planning grantee.

Changes: This notice of final priorities, application requirements, and selection criteria does not include the proposed competitive priority for current planning grantees.

Comment: A commenter proposed that schools already in the process of

institutionalizing reform strategies aimed toward the creation of smaller learning communities should receive priority points.

Discussion: The Program is designed to help schools plan, implement, or expand smaller learning communities. Schools that are already in the implementation stage should be in a position to submit a strong application for an implementation grant. The Department does not believe a priority for these schools is necessary.

Changes: None.

Comment: A commenter suggested that we expand the proposed priority for low-performing schools to include schools that may have groups of low-performing students with respect to gaps among diverse groups of students.

Discussion: The intent of this program is to improve student achievement for all students; therefore, the Assistant Secretaries believe that the competitive priority, as written, provides the appropriate level of targeting for low-performing schools under this program.

Changes: None.

Comment: A commenter recommended that we give competitive priority points to schools based on the size of their student body over 1,000 students.

Discussion: At this time there is not sufficient research evidence to support priority points for high schools that exceed a specific size.

Changes: None.

Application Requirements

Comment: A commenter disagreed with eliminating planning grants from the SLC competition stating that smaller learning communities are a new concept for many schools and local educational agencies (LEAs), and that LEAs need time to research best practices and plan before implementing.

Discussion: We are in agreement that planning grants should remain a part of the Smaller Learning Communities program. LEAs and their cooperating schools need time to decide on the best strategies to use at their sites, to develop support for those strategies among all stakeholders, and to plan for the implementation of those strategies.

Changes: The Department will invite applications for planning grants as well as for implementation grants in the FY 2001 competition.

Comment: A commenter suggested that the Department allow consortia of LEAs with ten or more districts to apply under a single grant application.

Discussion: The Department proposed that LEAs may include a maximum of ten schools within one application submitted by an LEA or consortium of LEAs. This proposal was based on a maximum award per application of $250,000 for planning grants and $2,500,000 for implementation grants. LEAs or consortia of LEAs may submit multiple applications requesting funds for up to ten schools within each application. We believe that an LEA or consortium applying for a single grant on behalf of more than ten schools will not have sufficient funds to carry out their proposed tasks, based on the funding scale.

Changes: None.

Selection Criteria

Comment: A commenter suggested that the program recognize efforts that support nationally recognized issues such as the disparity in performance for minority students, teacher shortages, and varying levels of teacher preparedness.

Discussion: The Smaller Learning Communities program statute focuses on increasing student academic achievement through the creation of smaller learning environments, as a strategy in and of itself. Many schools, particularly low-performing schools, are likely to exhibit the problems identified by the commenter, and individual applicants are encouraged to address these problems in their applications for funding.

Changes: None.

General Comments

Comment: A commenter proposed that applicants be required to address State content and performance standards as well as the role of the district in implementing the Smaller Learning Communities program.

Discussion: In accordance with section 10105(a)7 of the Program statute, the Department requires that applicants describe how the goals and objectives of the activities for which they are requesting funding are geared to meeting high State content standards and performance standards. Also, under section 10105(10), the application must include a description of the administrative and managerial relationship between the local educational agency and the smaller learning community or communities, including how such agency will demonstrate a commitment to the continuity of the smaller learning community or communities.

Changes: None.

Comment: A commenter suggested that the Department encourage adult education and career education as a resource for low-performing schools as well as partnerships between secondary and adult programs.

Discussion: While we agree that grantees should have a variety of strategies from which to choose, the focus of this program is to provide resources for LEAs that have large high schools. Schools have the flexibility to focus on career-specific curricula if that is what they choose to do.

Changes: None.

Comment: A commenter proposed that reducing school violence be an explicit program goal.

Discussion: We agree that creating smaller high schools holds great potential for improving school safety, and encourage applicants to include reducing school violence as a goal of their grant. In the selection criteria for implementation grants, incidents of violence and disciplinary actions are included among the factors peer reviewers will consider under the criterion of need for the project, and designing an effective method for describing progress toward the implementation of safe and successful smaller learning communities is included among the factors under the criterion for quality of the project evaluation.

Changes: None.

Competitive Priority

Under 34 CFR 75.105(c)(2), the Secretary gives a competitive priority to applications that request funding to support smaller learning communities in low-performing high schools that meet all other eligibility requirements for the competition. Applicants will receive up to five additional points based on the proportion of participating schools included in the application that are identified as low-performing. These points are in addition to any points the applicant earns under the selection criteria of the program. Low-performing schools can be identified by local and State educational agencies using the criteria in Title I, Part A, section 1116(c) of the Elementary and Secondary Education Act, which identifies for improvement any Title I school that has not made continuous and sustained progress over two years. In addition, for the purposes of this program, States and LEAs that have their own established criteria for identifying low-performing schools may use those criteria to provide evidence for the competitive priority. Applicants must specify the method used to identify schools as low-performing.

Application Requirements

The Secretary announces the following application requirements for the Smaller Learning Communities program. These are in addition to the

content that all Smaller Learning Communities grant applicants must include in their applications as required by the program statute under section 10105(a) of the Elementary and Secondary Education Act. A discussion of each requirement follows:

A. Proof of Eligibility

To be considered for funding, LEAs must include the name(s) of the eligible school(s) and the number of students enrolled in each school. Enrollment must be based upon data from the current school year or data from the most recently completed school year. LEAs applying on behalf of schools that are being constructed and do not have an active student enrollment at the time of application are not eligible under this program.

B. Types and Ranges of Awards

The Secretary will award both planning and implementation grants under this year's competition. Applicants pursuing planning grants must not yet have developed a viable plan for creating smaller learning communities. To apply for implementation funds, applicants must be prepared either to implement a new smaller learning community program within each targeted high school, or to expand an existing smaller learning community program.

For a one-year planning grant, LEAs may receive, on behalf of a single school, $25,000 to $50,000 per project. LEAs applying on behalf of a group of eligible schools may receive up to $250,000 per planning grant. As this program is designed to finance direct student services and local redesign and improvement efforts, districts should stay within the minimum and maximum school allocations when determining their group award request. Therefore, in order to ensure sufficient planning funds at the local level, LEAs may not request funds for more than 10 schools under a single application.

The chart below provides eligible ranges for awards under the planning grant:

Number of schools in LEA application	Award ranges
One School	$25,000–$50,000
Two Schools	$50,000–$100,000
Three Schools	$75,000–$150,000
Four Schools	$100,000–$200,000
Five Schools	$125,000–$250,000
Six Schools	$150,000–$250,000
Seven Schools	$175,000–$250,000
Eight Schools	$200,000–$250,000
Nine Schools	$225,000–$250,000
Ten Schools	$250,000

To ensure maximum flexibility and competitiveness, LEAs may submit multiple applications targeting distinct schools within each funding category. However, LEAs may not apply on behalf of a single high school in more than one application. Schools that received support through planning grants in the 2000 competition are not eligible to receive additional planning grants under the 2001 competition.

For a three-year implementation grant, LEAs may receive, on behalf of a single school, $250,000 to $500,000 per project. LEAs applying on behalf of a group of eligible schools may request up to $2,500,000 per implementation grant. As this program is designed to finance direct student services and local redesign and improvement efforts, districts should stay within the minimum and maximum school allocations when determining their group award request. Therefore, in order to ensure sufficient implementation funds at the local level, LEAs may not request funds for more than 10 schools under a single application.

The chart below provides eligible ranges for awards under the implementation grant:

Number of schools in LEA application	Award ranges
One School	$250,000–$500,000
Two Schools	$500,000–$1,000,000
Three Schools	$750,000–$1,500,000
Four Schools	$1,000,000–$2,000,000
Five Schools	$1,250,000–$2,500,000
Six Schools	$1,500,000–$2,500,000
Seven Schools	$1,750,000–$2,500,000
Eight Schools	$2,000,000–$2,500,000
Nine Schools	$2,250,000–$2,500,000
Ten Schools	$2,500,000

To ensure maximum flexibility and competitiveness, LEAs may submit multiple applications targeting distinct schools within each application. However, LEAs may not apply on behalf of a single high school in more than one application. Schools that benefited from FY 2000 implementation awards are not eligible to receive additional support under this competition. The total amount an LEA may receive, in any fiscal year under this program, may not exceed $5 million.

C. Project Period

Planning grants will fund activities up to 12 months. Implementation grants will fund activities up to 36 months.

Note: Applicants for multi-year awards must provide detailed, yearly budget information for the total grant period requested. Understanding the unique complexities of implementing a program that affects a school's organization, physical design, curriculum, instruction, and preparation of teachers, the Secretary anticipates awarding the entire grant amount for implementation projects at the time of the initial award. This will provide the applicant with the capacity to effectively carry out the comprehensive long-term activities involved in model development, documentation, evaluation, and dissemination of products and practices developed through the federal grant. Uninterrupted access to funds will depend upon a grantee's close adherence to its yearly budget projections as well as submission of an annual performance report, showing adequate progress, during the three-year period of the grant.

D. Page Limits

Applicants should limit the application narrative to no more than 25 double-spaced pages using the following standards:

(1) A page is 8.5″ x 11″, on one side only;

(2) The page limit includes all narrative, titles, headings, footnotes, quotations, references, and captions, as well as charts, tables, figures, and graphs. Charts, tables, figures, and graphs may be single-spaced;

(3) The font should be 11-point or larger;

(4) The page limit does not apply to the Application for Federal Education Assistance Form (424); the SLC cover page; the Budget Information Form (ED 524) and attached itemization of costs; any other required or supplementary application forms and attachments to those forms; the assurances and certifications; the table of contents; the one-page abstract (which should precede the narrative section and provide enrollment data for each eligible high school and a short description of the project); documentation of the extent to which the applicant meets the competitive priority for the competition; or appendices. Appendices used should relate directly to the selection criteria and project activities. Pages should be numbered.

E. Reporting Requirements and Expected Outcomes

For both planning and implementation grants, applicants must describe their:

(a) Project objectives;

(b) Measures of student outcomes and performance; and

(c) Indicators to gauge progress toward meeting project objectives.

In addition, the Secretary requires implementation grantees to collect data that address the performance indicators for this program in order to produce annual performance reports. These reports will document the grantees' yearly progress toward expected project

objectives. The Secretary will use these reports to measure the success of each grantee's project, as well as the effects of the Department of Education's Smaller Learning Communities program nationwide. A copy of the Smaller Learning Communities Annual Performance Report for implementation grantees is included in the application package. Planning grantees will be required to submit a performance report, including their implementation plan, at the end of their project.

Applicants must submit initial baseline data for each student outcome measure described below. Baseline data should come from either the current or previous school year. Applicants *must* report this data as an appendix. Upon notification of award, grantees will be required to submit student outcome data for three years preceding the baseline year.

Required student outcome measures include:

I. Student Achievement

(a) The number of students scoring at each proficiency level for each subject measured by a State assessment (district assessments may substitute where State assessments do not yet exist) in grades 9–12;

(b) The number of students taking the SAT and ACT, and their average scores;

II. Academic Rigor and Student Retention

(a) The number of students who take courses for which they receive both high school and college credit;

(b) The number of students completing high school;

(c) The overall reported average daily attendance for October.

III. School Climate

(a) The number of incidents of student violence, alcohol and drug use;

(b) The number of expulsions, suspensions, or other serious disciplinary actions; and

(c) The number of students involved in extracurricular activities.

Note: Percentages may be used in place of number of students where appropriate.

F. Definitions

(a) Definitions in EDGAR—Definitions defined in 34 CFR 77.1 are applicable to this program.

(b) Other definitions—The following definitions also apply to this program:

BIA school is a school operated or supported by the Bureau of Indian Affairs.

A group of schools is two or more schools that each meet the definition of a large high school.

A *large high school* is an entity that includes grades 11 and 12 and has an enrollment of 1,000 or more students in grades 9 and above.

A *low-performing school* is a school identified by local and State educational agencies under section 1116(c) of the Elementary and Secondary Education Act. Under current law, any Title I school that has not made ''adequate yearly progress'' over two years is identified by its LEA for improvement. In addition, for the purpose of this program, States and LEAs that have established criteria for identifying such schools may use their criteria to meet the competitive priority preference.

Selection Criteria

Under the Smaller Learning Communities program competition, a peer review panel will make a careful evaluation of applications. Each panelist will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Secretary. The Secretary will use the following selection criteria and associated point values in evaluating applications for planning and implementation grants:

(a) The maximum score for all of these criteria is 100 points. Applicants that meet the competitive priority eligibility requirements may receive up to 105 points.

(b) The maximum score for each criterion is indicated in parentheses. Within each criterion, the Secretary evaluates each factor equally.

The Secretary will base final funding decisions on the panel review ranking of applications. Geographic balance is no longer a consideration in funding decisions.

Planning Grants

(a) *Need for the project.* (25 points) In determining the need for the proposed project, the Secretary considers the following factors:

(1) The description and documentation of the targeted schools' need for the services provided and the need for the activities carried out by the proposed project consistent with the educational problems generally associated with the impersonal nature of large high schools. Need may consider factors such as: enrollment; attendance and drop-out rates; incidents of violence, drug and alcohol use, and disciplinary actions; percentage of students who pass graduation exams or State assessments (local assessments may be substituted in states that do not yet administer State assessments), enroll in advanced level courses, register for college entrance exams, and matriculate into postsecondary institutions or training; percentage of students who have limited English proficiency, who are migrant youth, who come from low-income families, or are otherwise disadvantaged; the applicant's fiscal capacity to fund programs described here without Federal assistance; or other local need factors as described by the applicant.

(2) The extent to which specific gaps or weaknesses [including the nature and magnitude of those gaps and weaknesses] in services, infrastructure, or opportunities have been identified by the applicant and will be addressed by the proposed project.

(b) *Foundation for planning.* (20 points) In determining the merit of the proposed process for developing a viable implementation plan, the Secretary considers the extent to which the application:

(1) Involves and documents the support of stakeholders both within the school community (e.g. administrators, staff, students, and parents) and within the greater community (e.g. representatives of institutions of higher education, employers, workforce investment boards, youth councils, and community-based organizations).

(2) Provides clear evidence of teacher involvement and support, particularly of those teachers who will be directly affected by the implementation plan.

(3) Indicates the collection and use of data that describe school needs.

(4) Documents the use of research-based findings in the proposed restructuring of the learning environment.

(c) *Feasibility and soundness of the planning process.* (45 points) In determining the feasibility and soundness of the planning process as a means of producing a viable implementation plan, the Secretary considers the extent to which the planned activities:

(1) Are based on a commitment to meeting the needs of all students and ensuring the successful completion of their education or career goals.

(2) Will lead to the establishment of smaller learning communities having clear goals and objectives connected to a mission statement and to student needs.

(3) Follow a timeline appropriate to the goals and objectives to be achieved.

(4) Involve key personnel who are qualified to undertake project activities.

(d) *Commitment of resources to the planning effort.* (10 points) In determining the commitment of resources to the planning effort the Secretary considers the extent to which:

(1) The requested budget adequately supports the proposed activities.

(2) State, local, and other Federal funds will be used to support the development of the plan.

(3) The administrative and managerial relationship between the LEA, the school(s), and the smaller learning community(ies) demonstrates a commitment to the concept of a smaller learning community and the planning process.

Implementation Grants

(a) *Need for the project.* (25 points) In determining the need for the proposed project, the Secretary considers the following factors:

(1) The description and documentation of the targeted schools' need for the services provided and the need for the activities carried out by the proposed project consistent with the educational problems generally associated with the impersonal nature of large high schools. Need may consider factors such as: enrollment; attendance and drop-out rates; incidents of violence, drug and alcohol use, and disciplinary actions; percentage of students who pass graduation exams or State assessments (local assessments may be substituted in states that do not yet administer State assessments), enroll in advanced level courses, register for college entrance exams, and matriculate into postsecondary institutions or training; percentage of students who have limited English proficiency, who are migrant youth, who come from low-income families, or are otherwise disadvantaged; the applicant's fiscal capacity to fund programs described here without Federal assistance; or other local need factors as described by the applicant.

(2) The extent to which specific gaps or weaknesses (including the nature and magnitude of those gaps and weaknesses) in services, infrastructure, or opportunities have been identified by the applicant and will be addressed by the proposed project.

(b) *Foundation for implementation.* (15 points) In determining the quality of the implementation plan, the Secretary considers the extent to which the application:

(1) Documents the involvement and support of stakeholders both within the school community (e.g., administrators, staff, students, and parents) and within the greater community (e.g. representatives of institutions of higher education, employers, workforce investment boards, youth councils, and community-based organizations).

(2) Provides clear evidence of teacher involvement and support, particularly of those teachers who will be directly affected by the implementation plan.

(3) Uses research-based findings and outside technical assistance in the proposed restructuring and in determining appropriate strategy(ies) to be implemented.

(c) *Feasibility and soundness of the plan.* (35 points) In determining the quality of the proposed project, the Secretary considers the extent to which:

(1) The goals and objectives of the smaller learning communities correspond to identified needs and are written in terms of student outcomes, including academic achievement.

(2) The curriculum and instructional practices within each smaller learning community are aligned with its goals, theme, and emphases, where they exist.

(3) The proposed smaller learning communities intervention(s) will benefit all students in the school and enable them to reach challenging State content standards and performance standards, ensuring their successful completion of high school and preparation for postsecondary education or a career.

(4) Professional development activities offered to teachers, non-instructional school staff, and others are aligned with smaller learning community goals.

(5) The applicant provides a rationale for—

- Identifying grade levels and ages of students to be served by the smaller learning community(ies); and
- The methods and timetable for placing students in the smaller learning community(ies). Note: Students are not to be placed according to ability, performance, or any other measure of merit. The Department expects that all students will benefit from the SLC intervention.

(6) The management plan appears capable of achieving the objectives of the proposed project on time and within budget, including:

- The past experience, training, and clearly defined responsibilities of personnel who have key roles in carrying out the project; and
- The timelines and milestones for accomplishing project tasks.

(d) *Quality of the project evaluation.* (15 points) In determining the quality of the evaluation, the Secretary considers whether the applicant has designed an effective method for:

(1) Collecting student performance data, including:

- Required data for annual performance reports,
- Baseline data (to be included as an Appendix; refer to ''Reporting Requirements and Expected Outcomes''), and data for three years preceding the baseline (the latter due upon award); and
- A process for monitoring and understanding changes in student outcomes for continuous improvement.

(2) Describing, on an annual basis, the progress towards implementing smaller learning communities and implementing related program changes undertaken to make the smaller learning communities safe and successful. This information will be reported in the Annual Performance Report.

(3) Disseminating best practices and products designed under this grant.

(e) *Adequacy of resources.* (10 points) In determining the adequacy of resources for the proposed project, the Secretary considers the extent to which:

(1) State, local, foundation, and other Federal funds will be used to support the implementation of the plan.

(2) The applicant will limit equipment, administrative costs, and other purchases in order to maximize the amount spent on delivery of services to students.

(3) The applicant demonstrates a commitment to sustain the project beyond the period covered by the Federal grant.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedures established in each State under the Executive Order.

If you want to know the name and address of any State Single Point of Contact (SPOC), see the latest list official SPOC list on the OMB Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants*.

In States that have not established a process or chosen a program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, area-wide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA #84.215L, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing on the same basis as we determine proof of mailing for applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice. Please Note That the Above Address Is Not the Same Address as the One to Which the Applicant Submits Its Completed Application. Do not Send Applications to the Above Address.

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(Catalogue of Federal Assistance Number: 84.215L Smaller Learning Communities program)

Dated: December 14, 2001.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 01–31273 Filed 12–18–01; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No. 84.215L]

Smaller Learning Communities Program

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2001.

Purpose of Program: The Smaller Learning Communities program will support the planning, implementation or expansion of small, safe, and successful learning environments in large public high schools to help ensure that all students graduate with the knowledge and skills necessary to make successful transitions to college and careers. These grants are authorized by title X, part A, section 10105 of the Elementary and Secondary Education Act of 1965 (ESEA)(20 U.S.C. 8005).

Eligible Applicants: Local educational agencies (LEAs), applying on behalf of large high schools, or schools funded by the Bureau of Indian Affairs (BIA schools), are eligible to apply. For purposes of this program, a large high school is defined as a school that includes grades 11 and 12 and enrolls at least 1,000 students in grades 9 and above.

Applications Available: December 19, 2001.

Deadline for Transmittal of Applications: February 19, 2002.

Deadline for Intergovernmental Review: April 18, 2002.

Estimated Available Funds: $96,700,000.

Types and Ranges of Awards: The Secretary will award both planning grants and implementation grants under this notice. LEAs may apply on behalf of one or more eligible schools. For a one-year planning grant, an LEA may receive, on behalf of a single school, $25,000 to $50,000 per project. LEAs applying on behalf of a group of eligible schools may receive funds up to $250,000 per planning grant. For a three-year implementation grant, an LEA may receive, on behalf of a single school, $250,000 to $500,000 per project. LEAs applying on behalf of a group of eligible schools may receive funds up to $2,500,000 per implementation grant. LEAs may submit multiple applications targeting up to ten distinct schools under a single application. However, an LEA may not apply on behalf of an eligible high school in more than one application.

Schools that benefited from FY 2000 implementation awards are not eligible to receive additional implementation support under this competition. Schools that benefited from FY 2000 planning awards are not eligible to receive additional planning support under this competition, but may apply for an implementation grant. The total amount an LEA may receive through any combination of awards, in any fiscal year of this program, may not exceed $5 million.

Note: The size of awards will be based on a number of factors. These factors include the scope, quality, and comprehensiveness of the proposed program; the size of the population to be served; and the recommended range of awards indicated in the application.

Estimated Number of Awards: The Secretary anticipates making approximately 190 new planning grant awards and approximately 90 new implementation awards under this competition.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: Planning grants will fund activities up to 12 months. Implementation grants will fund activities up to 36 months.

Note: Applicants for multi-year awards must provide detailed, yearly budget information for the total grant period requested. Understanding the unique complexities of implementing a program that affects a school's organization, physical design, curriculum, instruction, and preparation of teachers, the Secretary anticipates awarding the entire grant amount for implementation projects at the time of the initial award. This will provide the applicant with the capacity to effectively carry out the comprehensive long-term activities involved in model development, documentation, evaluation, and dissemination of products and practices developed through the federal grant. Uninterrupted access to funds will depend upon a grantee's close adherence to its yearly budget projections as well as submission of an annual performance report, showing adequate progress, during the three-year period of the grant.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) the regulations in the notice of final priorities, application requirements, and selection criteria for FY 2001 as published elsewhere in this issue of the **Federal Register**.

Competitive Priority—Low-Performing Schools

This competition gives a competitive priority to projects that meet the priority in the Notice of the Final Priorities for this program, which is published elsewhere in this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For information on the program and to download an application, you may access the SLC program web site at

www.ed.gov/offices/OESE/SLCP/. If you have questions pertaining to the application, you may send an email to *smallerlearningcommunities@ed.gov.* If you need further assistance and need to speak with someone in the SLC program, you may contact Andrew Abrams, (202) 260–7430, 330 C Street, SW, MES Bldg., Room 5512, Washington, DC 20202. You may also contact Diane Austin (202) 260–1280, 400 Maryland Ave., SW, Room 5C149, Washington, DC 20202–6200. Requests for applications may also be sent by fax to (202) 260–8969.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph.

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Program Authority: 20 U.S.C. 8005.

Dated: December 14, 2001.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

Carol D'Amico,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 01–31274 Filed 12–18–01; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Wednesday,
December 19, 2001

Part IV

Department of Labor

Pension and Welfare Benefits Administration

Publication of Year 2001 Form M–1; Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Publication of Year 2001 Form M–1

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice on the availability of the Year 2001 Form M–1.

SUMMARY: This document announces the availability of the Year 2001 Form M–1, Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception. A copy of this new form is attached.

FOR FURTHER INFORMATION CONTACT: Amy J. Turner, Pension and Welfare Benefits Administration, Department of Labor, at (202) 693–8335.

SUPPLEMENTARY INFORMATION:

I. Background

The Form M–1 is required to be filed under section 101(g) and section 734 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and 29 CFR 2520.101–2.

II. The Year 2001 Form M–1

This document announces the availability of the Year 2001 Form M–1, Annual Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs). A copy of the new form is attached.

This year's Form M–1 is substantively identical to the Year 2000 Form M–1. In addition, the filing deadlines for the Year 2001 Form M–1 parallel those for last year's form. Specifically, the Year 2001 Form M–1 is generally due March 1, 2002, with an extension until May 1, 2002 available. These Year 2001 deadlines were also previously published; they are included in the Department of Labor's regulations implementing the Form M–1 filing requirement and they were set forth in last year's Form M–1.

PWBA is committed to working together with administrators to help them comply with this filing requirement. Additional copies of the Form M–1 are available on the Internet at: *http://www.dol.gov/dol/pwba*. In addition, after printing, copies will be available by calling the PWBA toll-free publication hotline at 1–800–998–7542. Questions on completing the form are being directed to the PWBA help desk at (202) 693–8360.

Statutory Authority: Sec. 29 U.S.C. 1024, 1027, 1059, 1132(c)(5), 1135, 1181–1183, 1185, 1185a, 1185b, 1191, 1191a, 1191b, 1191c; Sec. 101, Pub. L. 104–191, 101 Stat. 1936 (29 U.S.C. 1181); Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

Signed at Washington, DC, this 13th day of December, 2001.

Ann L. Combs,

Assistant Secretary, Pension and Welfare Benefits Administration.

BILLING CODE 4510–29–P

2001 Form M-1

MEWA/ECE Form

This Form is Open to Public Inspection

Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)

This report is required to be filed under section 101(g){h} of the Employee Retirement Income Security Act of 1974 (as amended) and 29 CFR 2520.101-2.

➤ See separate instructions before completing this form.

OMB No. 1210-0116

Department of Labor
Pension and Welfare Benefits Administration

PART I REPORT IDENTIFICATION INFORMATION

Complete either Item **A** or Item **B**, as applicable.

A If this is an annual report, specify whether it is for:

(*1*) ☐ The 2001 calendar year; or

(*2*) ☐ The fiscal year beginning _____, _____ and ending _____, _____.

B If this is a special filing, specify whether it is:

(*1*) ☐ A 90-day origination report;

(*2*) ☐ An amended report; or

(*3*) ☐ A request for an extension.

PART II MEWA OR ECE IDENTIFICATION INFORMATION

1a Name and address of the MEWA or ECE	**1b** Telephone number of the MEWA or ECE
	1c Employer Identification Number (EIN)
	1d Plan Number (PN)
2a Name and address of the administrator of the MEWA or ECE	**2b** Telephone number of the administrator
	2c Employer Identification Number (EIN)
3a Name and address of the entity sponsoring the MEWA or ECE	**3b** Telephone number of the sponsor
	3c Employer Identification Number (EIN)

PART III REGISTRATION INFORMATION

4 Specify the most recent date the MEWA or ECE was originated ..... ➤ _____

5 Complete the following chart. (See Instructions for **Item 5**)

5a	5b	5c	5d	5e	5f	5g
Enter all States where the entity provides coverage.	Is the entity a licensed health insurance issuer in this State?	If you answer "yes" to **5b**, list any NAIC number.	If you answer "no" to **5b**, is the entity fully-insured?	If you answer "yes" to **5d**, enter the name of the insurer and its NAIC number.	Does the entity purchase stop-loss coverage?	If you answer "yes" to **5f**, enter the name of the stop-loss insurer and its NAIC number.
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	
	☐ Yes ☐ No		☐ Yes ☐ No		☐ Yes ☐ No	

6 Of the States identified in **Item 5a**, list those States in which the MEWA or ECE conducted 20 percent or more of its business (based on the number of participants receiving coverage for medical care under the MEWA or ECE).

7 Total number of participants covered under the MEWA or ECE ..... ➤ _____

PART IV INFORMATION FOR COMPLIANCE WITH PART 7 OF ERISA

8a Has the MEWA or ECE been involved in any litigation or enforcement proceeding in which noncompliance with any provision of Part 7 of Subtitle B of Title I (Part 7) of ERISA was alleged? Answer for the year to which this filing applies and any time since then up to the date of completing this form. Answer "Yes" for any State or federal litigation or enforcement proceeding (including any administrative proceeding), whether the allegation concerns a provision under Part 7 of ERISA, a corresponding provision under the Internal Revenue Code or Public Health Service Act, a breach of any duty under Title I of ERISA if the underlying violation relates to a requirement under Part 7 of ERISA, or a breach of a contractual obligation if the contract provision relates to a requirement under Part 7 of ERISA. (The instructions to this form contain additional information that may be helpful in answering this question.) ..... ➤ ☐ Yes ☐ No

8b If you answered "Yes" to **Item 8a**, identify each litigation or enforcement proceeding. With respect to each, include (if applicable): (1) the case number, (2) the date, (3) the nature of the proceedings, (4) the court, (5) all parties (for example, plaintiffs and defendants or petitioners and respondents), and (6) the disposition. You may answer this question by attaching a copy of the complaint with the name of the MEWA or ECE, the disposition of the case, and the phrase "Item 8b Attachment," noted in the upper right corner.

9 Complete the following. (Note: The instructions to this form contain four detailed worksheets which may be helpful in completing this item. Please read the instructions carefully before answering the following questions.)

9a	Is the coverage provided by the MEWA or ECE in compliance with the portability provisions of the Health Insurance Portability and Accountability Act of 1996 and the Department's regulations issued thereunder? (See Worksheet A) .... ➤	☐ Yes ☐ No ☐ N/A
9b	Is the coverage provided by the MEWA or ECE in compliance with the Mental Health Parity Act of 1996 and the Department's regulations issued thereunder? (See Worksheet B) ..... ➤	☐ Yes ☐ No ☐ N/A
9c	Is the coverage provided by the MEWA or ECE in compliance with the Newborns' and Mothers' Health Protection Act of 1996 and the Department's regulations issued thereunder? (See Worksheet C) ..... ➤	☐ Yes ☐ No ☐ N/A
9d	Is the coverage provided by the MEWA or ECE in compliance with the Women's Health and Cancer Rights Act of 1998? (See Worksheet D) ..... ➤	☐ Yes ☐ No ☐ N/A

IF MORE SPACE IS REQUIRED FOR ANY ITEM, YOU MAY ATTACH ADDITIONAL PAGES . (SEE INSTRUCTIONS SECTION 2.4)

Caution: *Penalties may apply in the case of a late or incomplete filing of this report.*

Under penalty of perjury and other penalties set forth in the instructions, I declare that I have examined this report, including any accompanying attachments, and to the best of my knowledge and belief, it is true and correct. Under penalty of perjury and other penalties set forth in the instructions, I also declare that, unless this is an extension request, this report is complete.

Signature of administrator ➤ _____ Date ➤ _____

Type or print name of administrator ➤ _____

Department of Labor
Pension and Welfare Benefits Administration

Year 2001
Instructions for Form M-1
Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)
ERISA refers to the Employee Retirement Income Security Act of 1974, as amended

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the law as specified in ERISA. You are required to give us the information. We need it to determine whether the MEWA or ECE is operating according to law. You are not required to respond to this collection of information unless it displays a current, valid OMB control number.

The average time needed to complete and file the form is estimated below. These times will vary depending on individual circumstances.

Learning about the law or the form	Preparing the form
2 hrs.	50 min. - 1 hr. and 35 min.

Contents

The instructions are divided into three main sections.

Notes on the 2001 Form M-1

- This year's Form M-1 is substantively identical to the 2000 Form M-1.
- The Year 2001 Form M-1 is generally due March 1, 2002, with an extension until May 1, 2002 available.

Introduction

This form is required to be filed under section 101(g) and section 734 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and 29 CFR 2520.101-2.

The Department of Labor, Pension and Welfare Benefits Administration (PWBA) is committed to working together with administrators to help them comply with this filing requirement. Additional copies of the Form M-1 are available by calling the PWBA toll-free publication hotline at 1-800-998-7542 and on the Internet at: http://www.dol.gov/dol/pwba. If you have any questions (such as whether you are required to file this report) or if you need any assistance in completing this report, please call the **PWBA help desk** at **(202) 693-8360**.

All Form M-1 reports are subject to a computerized review. It is, therefore, in the filer's best interest that the responses accurately reflect the circumstances they were designed to report.

SECTION 1

1.1 Definitions

"Administrator"
For purposes of this report, the "administrator" is the person specifically designated by the terms of the MEWA or ECE. However, if the MEWA or ECE is a group health plan and the administrator is not so designated, the "plan sponsor" is the administrator. ("Plan sponsor" is defined in ERISA section 3(16)(B) as (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.) Moreover, in the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot be identified, the administrator is the person or persons actually responsible (whether or not so designated under the terms of the MEWA or ECE) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent or trustee designated by such person or persons.

"Employer Identification Number" or "EIN"
An EIN is a nine-digit employer identification number. For example, 00-1234567. Entities who do not have an EIN can apply for one on Form SS-4, Application for Employer Identification Number. This form can be obtained at most IRS or Social Security Administration offices. PWBA does NOT issue EINs.

"Entity Claiming Exception" or "ECE"
For purposes of this report, the term "entity claiming exception" or "ECE" means any plan or other arrangement that is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, and that claims it is not a MEWA because the plan or other arrangement claims the exception relating to plans established or maintained pursuant to one or more collective bargaining agreements (contained in section 3(40)(A)(i) of ERISA).

The administrator of an ECE must file this report each year for the first three years after the ECE is "originated." (Warning: An ECE may be "originated" more than once. Each time an ECE is "originated," more filings are triggered.)

"Employee Welfare Benefit Plan"
In general, an employee welfare benefit plan means any plan, fund, or program established or maintained by an employer or by an employee organization, or by both, to the extent such plan, fund, or program provides its participants or beneficiaries the benefits listed in section 3(1) of ERISA (including benefits for medical care).

"Excepted benefits"
Part 7 of Subtitle B of Title I (Part 7) of ERISA does not apply to any group health plan or group health insurance issuer in relation to its provision of excepted benefits.

Certain benefits that are generally not health coverage are excepted in all circumstances. These benefits are: coverage only for accident (including accidental death and dismemberment), disability income

insurance, liability insurance (including general liability insurance and automobile liability insurance), coverage issued as a supplement to liability insurance, workers' compensation or similar insurance, automobile medical payment insurance, credit-only insurance (for example, mortgage insurance), and coverage for on-site medical clinics.

Other benefits that generally are health coverage are excepted if certain conditions are met. Specifically, limited scope dental benefits, limited scope vision benefits, and long-term care benefits are excepted if they are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of the group health plan. For more information on these limited excepted benefits, see the Department of Labor's regulations at 29 CFR 2590.732(b)(3).

In addition, noncoordinated benefits may be excepted benefits. The term "noncoordinated benefits" refers to coverage for a specified disease or illness (such as cancer-only coverage) or hospital indemnity or other fixed dollar indemnity insurance (such as insurance that pays $100/day for a hospital stay as its only insurance benefit), if three conditions are met. First, the benefits must be provided under a separate policy, certificate, or contract of insurance. Second, there can be no coordination between the provision of these benefits and another exclusion of benefits under a group health plan maintained by the same plan sponsor. Third, benefits must be paid without regard to whether benefits are provided with respect to the same event under a group health plan maintained by the same plan sponsor. For more information on these noncoordinated excepted benefits, see the Department of Labor's regulations at 29 CFR 2590.701.732(b)(4).

Finally, supplemental benefits may be excepted benefits if certain conditions are met. Specifically, the benefits are excepted only if they are provided under a separate policy, certificate or contract of insurance, and the benefits are medicare supplemental (commonly known as "Medigap" or "MedSupp") policies, CHAMPUS supplements, or supplements to certain employer group health plans. Such supplemental coverage cannot duplicate primary coverage and must be specifically designed to fill gaps in primary coverage, coinsurance, or deductibles. Note that retiree coverage under a group health plan that coordinates with Medicare may serve a supplemental function similar to that of a Medigap policy. However, such employer-provided retiree "wrap around" benefits are not excepted benefits (because they are expressly excluded from the definition of a Medicare supplemental policy in section 1882(g)(1) of the Social Security Act). For more information on supplemental excepted benefits, see the Department of Labor's regulations at 29 CFR 2590.732(b)(5).

"Group Health Plan"

In general, a group health plan means an employee welfare benefit plan to the extent that the plan provides benefits for medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. See ERISA section 733(a).

"Health Insurance Issuer" or "Issuer"

The term "health insurance issuer" or "issuer" is defined, in pertinent part, in § 2590.701-2 of the Department's regulations as "an insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in a State and that is subject to State law which regulates insurance . . . . Such term does not include a group health plan."

"Multiple Employer Welfare Arrangement" or "MEWA"

In general, a multiple employer welfare arrangement (MEWA) is an employee welfare benefit plan or other arrangement that is established or maintained for the purpose of offering or providing medical benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that the term does not include any such plan or other arrangement that is established or maintained under or pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements, by a rural electric cooperative, or by a rural telephone cooperative association. See ERISA section 3(40).

(Note: Many States regulate entities as MEWAs using their own, State definition of the term. Whether or not an entity meets a State's definition of a MEWA for purposes of regulation under State law is a matter of State law.)

For more information on MEWAs, visit the Pension and Welfare Benefits Administration's (PWBA's) website at www.dol.gov/dol/pwba or call the PWBA toll free publications hotline at 1-800-998-7542 and ask for the booklet entitled, "MEWAs: Multiple Employer Welfare Arrangements Under the Employee Retirement Income Security Act: A Guide to Federal and State Regulation."

For information on State MEWA regulation, contact your State Insurance Commissioner's Office.

"Originated"

For purposes of this report, a MEWA or ECE is "originated" each time any of the following events occur:

(1) The MEWA or ECE first begins offering or providing coverage for medical care to the employees of two or more employers (including one or more self-employed individuals);

(2) The MEWA or ECE begins offering or providing such coverage after any merger of MEWAs or ECEs (unless all MEWAs or ECEs involved in the merger were last originated at least three years prior to the merger); or

(3) The number of employees to which the MEWA or ECE offers or provides coverage for medical care is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless such increase is due to a merger with another MEWA or ECE under which all MEWAs and ECEs that participate in the merger were last originated at least three years prior to the merger).

Therefore, a MEWA or ECE may be originated more than once.

"Plan Number" or "PN"

A PN is a three-digit number assigned to a plan or other entity by an employer or plan administrator. For plans or other entities providing welfare benefits, the first plan number should be number 501 and additional plans should be numbered consecutively.

"Sponsor"

For purposes of this report, the "sponsor" means:

(1) If the MEWA or ECE is a group health plan, the sponsor is the "plan sponsor," which is defined in ERISA section 3(16)(B) as (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan; or **(2)** If the MEWA or ECE is not a group health plan, the sponsor is the entity that establishes or maintains the MEWA or ECE.

1.2 Who Must File

General Rules

The administrator of a multiple employer welfare arrangement (MEWA) generally must file this report for every calendar year, or portion thereof, that the MEWA offers or provides benefits for medical care to the employees of two or more employers (including one or more self-employed individuals). The administrator of an entity claiming exception (ECE) must file the report if the ECE was last originated at any time within three years before the annual filing due date. (See the definition of "originated" in Section 1.1 and the discussion of when to file in Section 1.3.) (**Caution:** An ECE may be "originated" more than once. Each time an ECE is "originated," more filings are triggered.)

Exception

Irrespective of the general rules (described above), in no event is reporting required by the administrator of a MEWA or ECE if the MEWA or ECE is licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees (or to their beneficiaries).

Additional Guidance

(1) In response to comments, and consistent with the question-and-answer guidance published in April and June of 2000, no penalties will be assessed against the administrator of a MEWA or ECE if the MEWA or ECE meets any of the following conditions –

(i) It provides coverage that consists solely of excepted benefits (defined above), which are not subject to Part 7 of ERISA. (However, if the MEWA or ECE provides coverage that consists both of excepted benefits and other benefits for medical care that are not excepted benefits, the administrator of the MEWA or ECE is required to file the Form M-1.)

(ii) It is an employee welfare benefit plan that is not subject to ERISA, including a governmental plan, church plan, or plan maintained only for the purpose of complying with workers' compensation laws, within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively.

(iii) It provides coverage only through employee welfare benefit plans that are not covered by ERISA, including governmental plans, church plans, and plans maintained only for the purpose of complying with workers' compensation laws, within the meaning of sections 4(b)(1), 4(b)(2), and 4(b)(3) of ERISA, respectively.

(2) In addition, in response to comments, and consistent with the question-and-answer guidance published in April and June of 2000, no penalties will be assessed against the administrator of an entity that would not constitute a MEWA or ECE but for the following circumstances:

(i) It provides coverage to the employees of two or more trades or businesses that share a common control interest of at least 25 percent at any time during the plan year, applying principles similar to the principles applied under section 414 of the Internal Revenue Code.

(ii) It is created by a change in control of businesses (such as a merger or acquisition) that is for a bona fide business purpose (that is, for a purpose other than avoiding Form M-1 filing) and is temporary in nature (that is, it does not extend beyond the end of the plan year following the year in which the change in control occurs).

(iii) It is a group health plan that covers a very small number of participants who are not employees (or former employees) of the plan sponsor, such as non-employee members of the board of directors or independent contractors. The number of non-employee participants covered by the plan is very small if it does not exceed one percent of the total number of participants, determined as of the last day of the year to be reported (or, in the case of a 90-day origination report, determined as of the 60th day following the origination date).

Good Faith Determinations Regarding Whether an Entity is an ECE

Accordingly, subject to the exceptions described above, the administrator of a MEWA is required to file annually. By contrast, the administrator of an ECE is required to file for three years following an origination.

Whether or not an entity is a MEWA or ECE is determined by the administrator acting in good faith. Therefore, if an administrator makes a good faith determination at the time of the filing that the entity is maintained pursuant to one or more collective bargaining agreements, then the entity is an ECE. Moreover, if the administrator makes a further good faith determination at the time of the filing that the ECE is not required to file because its most recent origination was more than three years ago, then a filing is not required. Even if the entity is later determined to be a MEWA, filings are not required prior to the determination that the entity is a MEWA if at the time the filings were due, the administrator made a good faith determination that the entity was an ECE. However, filings are required for years after the determination that the entity is a MEWA.

In contrast, while an administrator's good faith determination that an entity is an ECE may eliminate the requirement that the administrator of the entity file under this section for more than three years after the entity's origination date, the administrator's determination does not affect the applicability of State law to the entity. Accordingly, incorrectly claiming the exception may eliminate the need to file under this section, if the claiming of the exception is done in good faith. However, the claiming of the exception for ECEs under this filing requirement does not prevent the application of State law to an entity that is later determined to be a MEWA. This is because the filing, or the failure to file, under this section does not in any way affect the application of State law to a MEWA.

1.3 When to File

General Rule

The administrator of a MEWA or ECE that is required to file must file the Form M-1 no later than March 1 following any calendar year for which a filing is required (unless March 1 is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the following business day).

90-Day Origination Report

In general, an expedited filing is also required after a MEWA or ECE is originated. To satisfy this requirement, the administrator must complete and file the Form M-1 within 90 days of the date the MEWA or ECE is originated (unless the last day of the 90-day period is a Saturday, Sunday, or federal holiday, in which case the form must be filed no later than the following business day).

Exception to the 90-Day Origination Report Requirement

No 90-Day Origination Report is required if the entity was originated in October, November, or December.

Extensions

A one-time extension of time to file will automatically be granted if the administrator of the MEWA or ECE requests an extension. To request an extension, the administrator must: (1) complete Parts I and II of the Form M-1 (and check Box B(3) in Part I); (2) sign, date, and type the administrator's name at the end of the form; and (3) file this request for extension no later than the normal due date for the report. In such a case, the administrator will have an additional 60 days to file a completed Form M-1. A copy of this request for extension must be attached to the completed Form M-1 when filed.

1.4 Where to File

Completed copies of the Form M-1 should be sent to:

Public Documents Room, Pension and Welfare Benefits Administration
Room N-1513, U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

1.5 Penalties

ERISA provides for the assessment or imposition of a penalty for failure to file a report, failure to file a completed report, and late filings. In the event of no filing, an incomplete filing, or a late filing, a penalty may apply of up to $1,000 a day for each day that the administrator of the MEWA or ECE fails or refuses to file a complete report. In addition, certain other penalties may apply.

SECTION 2

2.1 Year to be Reported

General Rule

The administrator of a MEWA or ECE that is required to file should complete the form using the previous calendar year's information. (Thus, for example, for a filing that is due by March 1, 2002, calendar year 2001 information should be used.)

Fiscal Year Exception

The administrator of a MEWA or ECE that is required to file may report using fiscal year information if the administrator of the MEWA or ECE has at least six continuous months of fiscal year information to report. (Thus, for example, for a filing that is due by March 1, 2002, fiscal year 2001 information may be used if the administrator has at least six continuous months of fiscal year 2001 information to report.) In this case, the administrator should check Box A(2) in Part I and specify the fiscal year.

2.2 The 90-Day Origination Report

When a MEWA or ECE is originated, a 90-Day Origination Report is generally required. (See Section 1.3 on When to File). When filing a 90-Day Origination Report, the administrator is required to complete the Form M-1 using information based on at least 60 continuous days of operation by the MEWA or ECE.

Remember, there is an exception to the 90-Day Origination Report requirement. No 90-Day Origination Report is required if the entity was originated in October, November, or December.

2.3 Signature and Date

The administrator must sign and date the report. The signature must be original. The name of the individual who signed as the administrator must be typed or printed clearly on the line under the signature line.

2.4 Attaching Additional Pages

If more space is needed to complete any item on the Form M-1, additional pages may be attached. Additional pages must be the same size as this form (8 ½" x 11") and should include the name of the MEWA or ECE, the Item number, and the word "Attachment" in the upper right corner. In addition, the attachment for any item should be in a format similar to that item on the form.

2.5 Amended Report

To correct errors and/or omissions on a previously filed Form M-1, submit a completed Form M-1 with Part I, Box B(2) checked and an original signature. When filing an amended report, answer all questions and circle the amended line numbers.

SECTION 3

Important: "Yes/No" questions must be marked "Yes" or "No," but not both. "N/A" is not an acceptable response unless expressly permitted in the instructions to that line.

3.1 Line-By-Line Instructions

Part I - Report Identification Information

Complete either Item A or Item B, as applicable.

Annual Reports: If this is an annual report, check either box A(1) or box A(2).

Box A(1): Check this box if calendar year information is being used to complete this report. (See Section 2.1 on Year to be Reported.)

Box A(2): Check this box if fiscal year information is being used to complete this report. Also specify the fiscal year. (For example, if fiscal year 2001 information is being used instead of calendar year 2001 information, specify the date the fiscal year begins and ends.) (See Section 2.1 on Year to be Reported.)

Special Filings: If this is a special filing, check either box B(1), box B(2), or box B(3).

Box B(1): Check this box if this filing is a 90-Day Origination Report. (See Section 1.2 on Who Must File, Section 1.3 on When to File, and Section 2.2 on 90-Day Origination Reports.)

Box B(2): Check this box if this filing is an Amended Report. (See Section 2.5 on Amended Reports.)

Box B(3): Check this box if the administrator of the MEWA or ECE is requesting an extension. (See Section 1.3 on When to File.)

Part II - MEWA or ECE Identification Information

Items 1a through 1d: Enter the name and address of the MEWA or ECE, the telephone number of the MEWA or ECE, and any employer identification number (EIN) and plan number (PN) used by the MEWA or ECE in reporting to the Department of Labor or the Internal Revenue Service. If the MEWA or ECE does not have any EINs associated with it, leave Item 1c blank. If the MEWA or ECE does not have any PNs associated with it, leave Item 1d blank. In answering these questions, list only EINs and PNs used by the MEWA or ECE itself and not those used by group health plans or employers that purchase coverage through the MEWA or ECE. For more information on EINs or PNs, see Section 1.1 on Definitions.

Items 2a through 2c: Enter the name and address of the administrator of the MEWA or ECE, the telephone number of the administrator, and the EIN used by the administrator in reporting to the Department of Labor or the Internal Revenue Service. For this purpose, use only an EIN associated with the administrator as a separate entity. Do not use any EIN associated with the MEWA or ECE itself. For more information on the definition of "administrator," and on EINs or PNs, see Section 1.1 on Definitions.

Items 3a through 3c: Enter the name and address of the entity sponsoring the MEWA or ECE, the telephone number of the sponsor, and any EIN used by the sponsor in reporting to the Department of Labor or the Internal Revenue Service. For this purpose, use only an EIN associated with the sponsor. Do not use any EIN associated with the MEWA or ECE itself. For more information on the definition of "sponsor," and on EINs or PNs, see Section 1.1 on Definitions. If there is no such entity, leave Item 3 blank and skip to Item 4.

Part III - Registration Information

Item 4: Enter the date the MEWA or ECE was most recently "originated." For this purpose, see the definition of "originated" in Section 1.1.

Item 5: Complete the chart. If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.) When completing the chart, complete Item 5a first. Then for each row, complete Item 5b through Item 5g as it applies to the State listed in Item 5a.

Item 5a. Enter all States in which the MEWA or ECE provides benefits for medical coverage. For this purpose, list the State(s) where the employers (of the employees receiving coverage) are domiciled. In answering this question, a "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Northern Mariana Islands. Enter one State per row.

Item 5b. For each State listed in Item 5a, specify whether the MEWA or ECE is licensed or otherwise authorized to operate as a health insurance issuer in the State listed in that row. (For a definition of the term "health insurance issuer," see Section 1.1.) For more information on whether an entity that is a licensed or registered MEWA in a State meets the definition of a health insurance issuer in that State, contact the State Insurance Commissioner's Office.

Item 5c. For each "yes" answer in Item 5b, enter the National Association of Insurance Commissioners (NAIC) number.

Item 5d. For each "no" answer in Item 5b, specify whether the MEWA or ECE is fully-insured through one or more health insurance issuers in each State.

Item 5e. For each "yes" answer in Item 5d, enter the name of the insurer, and its NAIC number (if available). If there is more than one insurer, enter all insurers, and their NAIC numbers (if applicable).

Item 5f. In each State listed in Item 5a, specify whether the MEWA or ECE has purchased any stop-loss coverage. For this purpose, stop-loss coverage includes any coverage defined by the State as stop-loss coverage. For this purpose, stop-loss coverage also includes any financial reimbursement instrument that is related to liability for the payment of health claims by the MEWA or ECE, including reinsurance and excess loss insurance.

Item 5g. For each "yes" answer in Item 5f, enter the name of the stop-loss insurer, and its NAIC number (if available). If there is more than one stop-loss insurer, enter all stop-loss insurers, and their NAIC numbers (if applicable).

Item 6: Of the States identified in Item 5a, identify all States in which the MEWA or ECE conducted 20 percent or more of its business (based on the number of participants receiving coverage for medical care under the MEWA or ECE).

For example, consider a MEWA that offers or provides coverage to the employees of six employers. Two employers are located in State X and 70 participants in the MEWA receive coverage through these two employers. Three employers are located in State Y and 30 participants in the MEWA receive coverage through these three employers. Finally, one employer is located in State Z and 200 participants in the MEWA receive coverage through this employer. In this example, the administrator of the MEWA should specify State X and State Z under Item 6 because the MEWA conducts 23⅓% of its business in State X (70÷300 = 23⅓%) and 66⅔% of its business in State Z (200÷300 = 66⅔%). However, the administrator should not specify State Y because the MEWA conducts only 10% of its business in State Y (30÷300 = 10%).

If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Item 7: Identify the total number of participants covered under the MEWA or ECE. For more information on determining the number of participants, see the Department of Labor's regulations at 29 CFR 2510.3-3(d).

If the report is a 90-Day Origination Report, complete this item with information that is current as of the 60th day following the origination date. Otherwise, complete this item with information that is current as of the last day of the year to be reported. (See Section 2.1 on Year to be Reported.)

Part IV - Information for Compliance with Part 7 of ERISA

Background Information on Part 7 of ERISA: On August 21, 1996, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) was enacted. On September 26, 1996, both the Mental Health Parity Act of 1996 (MHPA) and the Newborns' and Mothers' Health Protection Act of 1996 (Newborns' Act) were enacted. On October 21, 1998, the Women's Health and Cancer Rights Act of 1998 (WHCRA) was enacted. All of the foregoing laws amended Part 7 of Subtitle B of Title I (Part 7) of ERISA with new requirements for group health plans. With respect to most of these requirements, corresponding provisions are contained in Chapter 100 of Subtitle K of the Internal Revenue Code (Code) and Title XXVII of the Public Health Service Act (PHS Act). These provisions generally are substantively identical.

The Departments of Labor, the Treasury, and Health and Human Services first issued interim final regulations implementing HIPAA's portability, access, and renewability provisions on April 1, 1997 (published in the Federal Register on April 8, 1997, 62 FR 16893). Two clarifications of the HIPAA regulations were published in the Federal Register on December 29, 1997 at 62 FR 67687. Regulations implementing the MHPA provisions were published in the Federal Register on December 22, 1997 at 62 FR 66931. Also, regulations implementing the substantive provisions of the Newborns' Act were published in the Federal Register on September 9, 1998 at 63 FR 48372 and on October 27, 1998 at 63 FR 57545. Moreover, the notice requirements with respect to group health plans that provide coverage for maternity or newborn infant coverage are described in the Department's summary plan description content regulations at § 2520.102-3(u), 63 FR 48372 (September 9, 1998). Finally, the Department of Labor has published two sets of informal, question-and-answer guidance on WHCRA. These sets of question-and-answer guidance are available on the Department's website at www.dol.gov/dol/pwba and from the Pension and Welfare Benefits Administration's toll-free publications hotline at 1-800-998-7542.

General Information Regarding the Applicability of Part 7: In general, the foregoing provisions apply to group health plans and health insurance issuers in connection with a group health plan.

Many MEWAs and ECEs are group health plans or health insurance issuers. However, even if a MEWA or ECE is neither a group health plan nor a health insurance issuer, if the MEWA or ECE offers or provides benefits for medical care through one or more group health plans, the coverage is required to comply with Part 7 of ERISA and the MEWA or ECE is required to complete Item 8a through Item 9d.

Relation to Other Laws: States may, under certain circumstances, impose stricter laws with respect to health insurance issuers. Generally, questions concerning State laws should be directed to the State Insurance Commissioner's Office.

For More Information: To obtain copies of the Department of Labor's booklet, "Questions and Answers: Recent Changes in Health Care Law," which includes information on HIPAA, MHPA, the Newborns' Act, and WHCRA, you may call the Pension and Welfare Benefits Administration's (PWBA's) toll-free publication hotline at 1-800-998-7542. This booklet is also available on the Internet at: www.dol.gov/dol/pwba. If you have any additional questions concerning Part 7 of ERISA, you may call the PWBA office nearest you or the PWBA technical assistance hotline at 202-219-8776.

Items 8a and 8b: With respect to Item 8a, check "yes" or "no" as applicable. For this purpose, do not include any audit that does not result in required corrective action. If you answer "yes" under Item 8a, identify, in Item 8b, any such litigation or enforcement proceeding.

Item 9a: The portability requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) added sections 701, 702, and 703 of ERISA.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if either of the following paragraphs apply:

(1) The MEWA or ECE is a small health plan (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

(2) The MEWA or ECE offers coverage only to small group health plans (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet A may be helpful.

Item 9b: The Mental Health Parity Act of 1996 (MHPA) added section 712 of ERISA. It includes a "sunset" provision providing that the law will cease to apply to benefits for services furnished on or after September 30, 2001. This sunset provision may be eliminated or changed by future legislation.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if any of the following paragraphs apply:

(1) The MEWA or ECE is a small group health plan (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

(2) The MEWA or ECE offers coverage only to small group health plans (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

(3) The MEWA or ECE does not provide both medical/surgical benefits and mental health benefits.

(4) The MEWA or ECE offers or provides coverage only to small employers (as described in the small employer exemption contained in section 712(c)(1) of ERISA and § 2590.712(e) of the Department's regulations).

(5) The coverage has satisfied the requirements for the increased cost exemption (described in section 712(c)(2) of ERISA and § 2590.712(f) of the Department's regulations).

Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet B may be helpful.

Item 9c: The Newborns' and Mothers' Health Protection Act of 1996 (Newborns' Act) added section 711 of ERISA.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if either of the following paragraphs apply:

(1) The MEWA or ECE does not provide benefits for hospital lengths of stay in connection with childbirth.

(2) The MEWA or ECE is subject to State law regulating such coverage, instead of the federal Newborns' Act requirements, in all States identified in Item 5a, in accordance with section 711(f) of ERISA and § 2590.711(e) of the Department's regulations.

Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet C may be helpful.

Item 9d: The Women's Health and Cancer Rights Act of 1998 (WHCRA) added section 713 of ERISA.

General Applicability. In general, you should answer "yes" or "no" to this question if you are the administrator of a MEWA or ECE that is a group health plan or if you are providing benefits for medical care to employees through one or more group health plans.

Exceptions. You may answer "N/A" if any of the following paragraphs apply:

(1) The MEWA or ECE is a small health plan (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

(2) The MEWA or ECE offers coverage only to small group health plans (as described in section 732(a) of ERISA and § 2590.732(a) of the Department's regulations).

(3) The MEWA or ECE does not provide medical/surgical benefits with respect to a mastectomy.

Worksheet. For purposes of determining if a MEWA or ECE is in compliance with these provisions, Worksheet D may be helpful.

3.2 Voluntary Worksheets

Voluntary worksheets, which may be used to help assess an entity's compliance with Part 7 of ERISA, are included on the following pages of these instructions. These worksheets may also be helpful in answering Items 9a through 9d of the Form M-1.

Worksheet A (Form M-1)	**Determining Compliance with the HIPAA Provisions in Part 7 of Subtitle B of Title I of ERISA** Do NOT file this worksheet.	Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the HIPAA provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to any of the questions below, you should review your entity's operations because the entity may not be in full compliance with the HIPAA provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits adviser.

(1) Does the coverage provided by the MEWA or ECE issue complete certificates of creditable coverage automatically to individuals who lose coverage under the MEWA or ECE and to individuals upon request? ..... ➤ ☐ Yes ☐ No

- Section 701(e) of ERISA and § 2590.701-5 of the Department's regulations require group health plans and group health insurance issuers to issue, free of charge, certificates of creditable coverage automatically to individuals who lose coverage and to any individual upon request.
- To be complete, the certificate must include: the date, the name of the plan, the participant and/or beneficiary's name and identification information, the plan administrator's contact information (name, address, and telephone number, a telephone number to call for further information (if different than the plan administrator's number)), and the individual's creditable coverage information, as described below. (**__**TIP**__: Don't forget dependent information.)
- With respect to an individual's creditable coverage information, the certificate must reflect either – (1) that an individual has at least 18 months of creditable coverage; or (2) the date any waiting period (or affiliation period) began and the date creditable coverage began. In addition, the certificate must reflect either – (1) the date creditable coverage ended; or (2) that coverage is continuing. (**__**TIP**__: Don't forget waiting period information.)
- For a certificate issued automatically upon loss of coverage, the certificate should reflect the last continuous period of coverage. For a certificate issued upon request, the certificate should reflect each period of continuous coverage that the individual had in the 24 months prior to the date of request (up to 18 months of creditable coverage).
- Most health coverage is creditable coverage. However, coverage consisting solely of excepted benefits is not creditable coverage. Examples of benefits that may be excepted benefits include limited-scope dental benefits, limited-scope vision benefits, hospital indemnity benefits, and Medicare supplemental benefits.
- If you have a question about whether health coverage offered by a MEWA or ECE is creditable coverage or is coverage consisting solely of excepted benefits, contact the PWBA office nearest you or call the PWBA Division of Technical Assistance and Inquiries at 202-219-8776. This is not a toll-free number.

(2) Does the coverage provided by the MEWA or ECE make available a procedure for individuals to request and receive certificates? ..... ➤ ☐ Yes ☐ No

- Section 2590.701-5(a)(4)(ii) of the Department's regulations requires group health plans and group health insurance issuers to establish a procedure for individuals to request and receive certificates.

(3) If the coverage provided by the MEWA or ECE imposes a preexisting condition exclusion period, are notices provided informing individuals of the exclusion, the terms of the exclusion, and the right of individuals to demonstrate creditable coverage to reduce the period of the exclusion? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 2590.701-3(c) of the Department's regulations requires that a group health plan, and a group health insurance issuer, may not impose a preexisting condition exclusion with respect to a participant or a dependent of the participant before notifying the participant, in writing, of the existence and terms of any preexisting condition exclusion under the plan and of the rights of individuals to demonstrate creditable coverage.

Question # 3 is continued on the next page.

- **TIP: Check for "hidden" preexisting condition exclusion periods. Coverage or exclusion provisions that limit benefits based on the fact that a condition was present before an individual's effective date of coverage are preexisting condition exclusions and must either be eliminated, or must comply with HIPAA's limitations on preexisting condition exclusion periods, including this general notice provision, the individual notice provision described in Question #4, and HIPAA's other limits on preexisting condition exclusion periods, described in Question #5.

- The description of the rights of individuals to demonstrate creditable coverage includes a description of the right of the individual to request a certificate from a prior plan or issuer, if necessary, and a statement that the current plan or issuer will assist in obtaining a certificate from any prior plan or issuer, if necessary.

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(4) If the coverage provided by the MEWA or ECE imposes a preexisting condition exclusion period, are letters of determination and notification of creditable coverage provided within a reasonable time after the receipt of individuals' creditable coverage information? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 2590.701-5(d) of the Department's regulations states that, within a reasonable time following receipt of evidence of creditable coverage, a plan or issuer seeking to impose a preexisting condition exclusion with respect to an individual is required to disclose to the individual, in writing, its determination of any preexisting condition exclusion period that applies to the individual, and the basis for such determination, including the source and substance of any information on which the plan or issuer relied.

- In addition, the plan or issuer is required to provide the individual with a written explanation of any appeal procedures established by the plan or issuer, and with a reasonable opportunity to submit additional evidence of creditable coverage.

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(5) If the coverage provided by the MEWA or ECE imposes a preexisting condition exclusion, does it comport with HIPAA's other limitations on preexisting condition exclusions? ..... ➤ ☐ Yes ☐ No ☐ N/A

- **TIP: Again, check for "hidden" preexisting condition exclusion periods. Coverage or exclusion provisions that limit benefits based on the fact that a condition was present before an individual's effective date of coverage are preexisting condition exclusions and must either be eliminated, or must comply with HIPAA's limitations on preexisting condition exclusion periods.

- Section 701(a)(1) of ERISA and § 2590.701-3(a)(1)(i) of the Department's regulations provide that a plan or issuer may impose a preexisting condition exclusion period only if it relates to a condition for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the individual's enrollment date in the plan or coverage. (Therefore, genetic information is not treated as a preexisting condition in the absence of a diagnosis of the condition related to such information.) (In addition, for health insurance issuers, State law may prescribe a shorter period than the 6-month period that generally applies.)

- The enrollment date, for purposes of the HIPAA limitations on preexisting condition exclusion periods, is the first day of coverage or, if there is a waiting period, the first day of the waiting period. (**TIP: If the MEWA or ECE imposes a waiting period, ensure that the 6-month look-back period ends on the first day of the waiting period, not the first day of coverage.)

- Section 701(a)(2) of ERISA and section § 2590.701-3(a)(1)(ii) of the Department's regulations provide that any preexisting condition exclusion period is limited to 12 months (18 months for late enrollees) after an individual's enrollment date in the plan or coverage. (For health insurance issuers, State law may prescribe a shorter period.) (**TIP: If the MEWA or ECE imposes a waiting period, ensure that the 12-month (or 18-month for late enrollees) maximum preexisting condition exclusion period begins on the first day of the waiting period, not the first day of coverage.)

- Section 701(a)(3) of ERISA and § 2590.701-3(a)(1)(iii) of the Department's regulations provide that any preexisting condition exclusion period is reduced by the number of days of an individual's creditable coverage prior to his or her enrollment date.

- When determining the number of days of creditable coverage, the plan or issuer is not required to take into account any days that occur prior to a significant break in coverage. The federal law defines a significant break in coverage as a break of 63 days or more. However, State law applicable to health insurance coverage offered or provided by health insurance issuers may provide for a longer period.

- In any case, section 701(d) of ERISA and § 2590.701-3(b) provide that a group health plan, and a group health insurance issuer, may not impose any preexisting condition exclusion period with regard to a child who enrolls in a group heath plan within 30 days of birth, adoption, or placement for adoption and who does not incur a subsequent significant break in coverage. In addition, a group health plan, and a group health insurance issuer, may not impose a preexisting condition exclusion relating to pregnancy. (For health insurance issuers, State law may further restrict the extent to which a preexisting condition exclusion may be imposed.)

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(6) Does the coverage provided by the MEWA or ECE provide notices of special enrollment rights to employees who are eligible to enroll in the plan or coverage? ..... ➤ ☐ Yes ☐ No

- Section 2590.701-6(c) of the Department's regulations requires that, on or before the time an employee is offered the opportunity to enroll in a group health plan or coverage, the plan or issuer provide the employee with a description of the plan's special enrollment rules.
- For this purpose, the plan may use the following model description of special enrollment rules:

> If you are declining enrollment for yourself or your dependents (including your spouse) because of other health insurance coverage, you may in the future be able to enroll yourself or your dependents in this plan, provided that you request enrollment within 30 days after your other coverage ends. In addition, if you have a new dependent as a result of marriage, birth, adoption, or placement for adoption, you may be able to enroll yourself and your dependents, provided that you request enrollment within 30 days after the marriage, birth, adoption, or placement for adoption.

(7) Does the coverage provided by the MEWA or ECE provide special enrollment rights to individuals who lose other coverage and to individuals who acquire a new dependent, if they request enrollment within 30 days of the loss of coverage, marriage, birth, adoption, or placement for adoption? ..... ➤ ☐ Yes ☐ No

- Section 701(f) of ERISA and § 2590.701-6 of the Department's regulations require group health plans, and group health insurance issuers, if certain conditions are met, to permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage under the terms of the plan if the individual either – (1) has a new dependent through marriage, birth, adoption, or placement for adoption; or (2) loses eligibility for other group health plan or health insurance coverage or employer contributions towards the other coverage terminate.
- **TIP: Ensure that the MEWA or ECE provides special enrollment to all individuals who qualify. Among others, this includes individuals who lose eligibility for individual market coverage, individuals who voluntarily terminate employment and lose group health plan coverage (even if they are eligible for COBRA continuation coverage), individuals who exhaust COBRA, children who "age out" of eligibility under another parent's group health plan, individuals who move out of a group health plan's HMO service area, and individuals whose employers cease contributing towards their group health plan coverage (even if coverage does not cease).
- For individuals who special enroll after marriage or loss of other coverage, coverage must be made effective no later than on the first day of the first calendar month following the date the completed request for enrollment is received. For individuals who special enroll after birth, adoption, or placement for adoption, coverage must be made effective no later than the date of such birth, adoption, or placement for adoption. (**TIP: Ensure that effective dates of coverage for special enrollees are correct.)
- For State laws applicable to health insurance issuers that may provide individuals with additional special enrollment rights, check with an attorney or the Insurance Commissioner's Office in your State.

(8) Does the coverage provided by the MEWA or ECE provide rules for eligibility (including continued eligibility) that comply with the nondiscrimination requirements that prohibit discrimination against any individual or a dependent based on any health factor? ..... ➤ ☐ Yes ☐ No

- Section 702(a) of ERISA and § 2590.702(a) of the Department's regulations provide that a group health plan, and a group health insurance issuer, may not establish rules for eligibility (including continued eligibility, rules defining any applicable waiting periods, and rules relating to late and special enrollment) of any individual to enroll under the terms of the plan based on a health factor.
- The health factors are: health status, medical condition (including both physical and mental illnesses), claims experience, receipt of health care, medical history, genetic information, evidence of insurability (including conditions arising out of acts of domestic violence), and disability.
- However, nothing requires a plan or issuer to provide particular benefits other than those provided under the terms of the plan or coverage. In addition, nothing prevents a plan or issuer from establishing limitations or restrictions on the amount, level, extent, or nature of benefits or coverage for similarly situated individuals enrolled in the plan or coverage.
- **TIP: Ensure that the plan does not require individuals to present evidence of insurability in order to enroll in the plan, even at late enrollment.

Question # 8 is continued on the next page.

- **TIP: On January 8, 2001, the Department published interim final regulations, which provide more comprehensive guidance on these nondiscrimination provisions. New guidance in these regulations is generally applicable for plan years beginning on or after July 1, 2001. Because of the delayed applicability date, the new guidance is not addressed in this worksheet. However, Frequently Asked Questions and Answers are available on the Internet at: http://www.dol.gov/dol/pwba or by calling the PWBA toll-free publication hotline at 1-800-998-7542.

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(9) Does the coverage provided by the MEWA or ECE comply with the nondiscrimination requirements that prohibit requiring any individual (as a condition of enrollment or continued enrollment) to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health factor? ..... ➤ ☐ Yes ☐ No

- Section 702(b) of ERISA and § 2590.702(b) of the Department's regulations provide that a group health plan, and a group health insurance issuer, may not require any individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health factor (defined above).

- However, nothing restricts the amount that an employer may be charged for coverage under a group health plan and nothing prevents a plan or issuer from establishing premium discounts or rebates or modifying applicable copayments or deductibles in return for adherence to bona fide wellness programs.

- **TIP: On January 8, 2001, the Department published interim final regulations, which provide more comprehensive guidance on these nondiscrimination provisions. New guidance in these regulations is generally applicable for plan years beginning on or after July 1, 2001. Because of the delayed applicability date, the new guidance is not addressed in this worksheet. However, Frequently Asked Questions and Answers are available on the Internet at: http://www.dol.gov/dol/pwba or by calling the PWBA toll-free publication hotline at 1-800-998-7542.

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(10) If the entity is a group health plan which is a multiemployer plan or a MEWA, does it comply with the guaranteed renewability requirements, which generally prohibit it from denying an employer whose employees are covered under a group health plan continued access to the same or different coverage under the terms of the plan? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 703 of ERISA provides that a group health plan that is a multiemployer plan or a MEWA may not deny an employer whose employees are covered under the plan continued access to the same or different coverage under the terms of the plan, other than: for nonpayment of contributions; for fraud or other intentional misrepresentation of material fact by the employer; for noncompliance with material plan provisions; because the plan is ceasing to offer any coverage in a geographic area; in the case of a plan that offers benefits through a network plan, because there is no longer any individual enrolled through the employer who lives, resides, or works in the service area of the network plan and the plan acts without regard to the claims experience of the employer or any health factor in relation to those individuals or their dependents; and for failure to meet the terms of an applicable collective bargaining agreement, to renew a collective bargaining or other agreement requiring or authorizing contributions to the plan, or to employ employees covered by such an agreement.

- For other laws applicable to health insurance issuers that may provide additional guaranteed renewability requirements, check with an attorney or the Insurance Commissioner's Office in your State.

Worksheet B (Form M-1)	**Determining Compliance with the Mental Health Parity Act (MHPA) Provisions in Part 7 of Subtitle B of Title I of ERISA** Do NOT file this worksheet.	Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the MHPA provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to the question below, you should review your entity's operations because the entity may not be in full compliance with the MHPA provisions in Part 7 of ERISA. If you need help answering this question or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits adviser.

** Note: Under MHPA, there is a "sunset" provision providing that the law will cease to apply to benefits for services furnished on or after September 30, 2001. This provision may be eliminated or changed by future legislation.

Q. If the MEWA or ECE offers or provides coverage for both mental health benefits and medical/surgical benefits, does the coverage comply with the requirements of the MHPA provisions, which are contained in section 712 of ERISA? . . . . . ➤ ☐ Yes ☐ No ☐ N/A

- Section 712 of ERISA and § 2590.712 of the Department's regulations generally provide for parity in the application of aggregate lifetime dollar limits and in the application of annual dollar limits between benefits for medical and surgical care and benefits for mental health coverage.
- These provisions do not require a group health plan or group health insurance coverage to provide any mental health coverage. Further, MHPA does not apply to benefits for treatment of substance abuse or chemical dependency.
- There are also exemptions for small employers and certain plans or coverage with increased costs.
- Finally, MHPA does not apply to benefits for services furnished on or after September 30, 2001.
- To find out more about these provisions, you can call the PWBA toll-free publication hotline at 1-800-998-7542 and request a copy of "Recent Changes in Health Care Law." This information can also be downloaded from the PWBA website at: www.dol.gov/dol/pwba. If you have questions, you can call the PWBA office nearest you or call the PWBA Division of Technical Assistance and Inquiries at 202-219-8776.

Worksheet C **(Form M-1)**	**Determining Compliance with the Newborns' and Mothers' Health Protection Act (Newborns' Act) Provisions in Part 7 of Subtitle B of Title I of ERISA** Do NOT file this worksheet.	Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the Newborns' Act provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to either of the questions below, you should review your entity's operations because the entity may not be in full compliance with the Newborns' Act provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits adviser.

(1) If the MEWA or ECE offers or provides benefits for hospital stays in connection with childbirth and is subject to the Newborns' Act, does the coverage comply with the Newborns' Act's substantive requirements, which are contained in section 711 of ERISA? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 711 of ERISA and § 2590.711 of the Department's regulations generally provide that a group health plan, and a group health insurance issuer, that offers benefits for hospital lengths of stay in connection with childbirth may not restrict benefits for any hospital length of stay in connection with childbirth for the mother or her newborn child, following a vaginal delivery to less than 48 hours, and following a cesarean section to less than 96 hours, unless the attending provider, in consultation with the mother, decides to discharge earlier.

- In addition, such a plan or issuer may not require that the provider obtain authorization from the plan or issuer for prescribing any length of hospital stay up to 48 hours following a vaginal delivery and up to 96 hours following a cesarean section. Nor may such a plan or issuer penalize an attending provider for providing care in a manner consistent with this law or provide incentives to an attending provider to provide care in a manner that is inconsistent with this law. Nor may such a plan or issuer deny the mother or newborn eligibility or continued eligibility, or provide incentives to mothers to encourage them to accept less than the minimum length of stay required. Nor may such a plan or issuer restrict benefits for any portion of a period within a hospital length of stay required by this law in a manner that is less favorable than the benefits provided for any preceding portion of the stay.

- **__TIP__: Check whether the federal Newborns' Act's requirements in section 711 of ERISA apply, or whether the coverage is instead subject to State law regulating such coverage. For this purpose, the following information is helpful:

  (A) Self-insured coverage: The federal Newborns' Act's requirements in section 711 of ERISA apply to self-insured benefits offered in connection with childbirth.

  (B) Insured coverage: On the other hand, State law (rather than federal law) applies to health insurance coverage offered in connection with childbirth if the State law meets certain criteria specified in ERISA section 711(f). Based on a preliminary review of State laws as of January 1, 2001, State law rather than federal law applies to health insurance coverage offered in connection with childbirth in all States and other U.S. jurisdictions except:

  Wisconsin, Puerto Rico, the Virgin Islands, American Samoa, Wake Island, and the Northern Mariana Islands.

  Therefore, the federal Newborns' Act provisions appear to apply to health insurance coverage in these States and jurisdictions.

(2) If the MEWA or ECE offers or provides benefits in connection with childbirth, are the disclosure requirements under the Newborns' Act satisfied? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 2520.102-3(u) of the Departments regulations requires all group health plans providing maternity benefits to include a statement in their summary plan descriptions advising individuals of the Newborns' Act's requirements. (Note: Parallel disclosure requirements are contained in section 711(d) of ERISA, if applicable (see discussion of federal Newborns' Act applicability above under Question 1).)

- For this purpose, a MEWA or ECE that is subject to the Newborns' Act's disclosure requirements through ERISA may use the following sample language:

  Group health plans and health insurance issuers generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section. However, Federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

- A similar disclosure requirement applies to nonfederal governmental plans. For mandated language required to be used with respect to such plans, see 45 CFR § 146.130(d)(2) (published in the **Federal Register** at 63 FR 57561 on October 27, 1998).

Worksheet D **(Form M-1)**	**Determining Compliance with the Women's Health and Cancer Rights Act (WHCRA) Provisions in Part 7 of Subtitle B of Title I of ERISA** Do NOT file this worksheet.	Department of Labor Pension and Welfare Benefits Administration

This worksheet may be used to help assess an entity's compliance with the WHCRA provisions of Part 7 of Subtitle B of Title I (Part 7) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, it is not a complete description of all the provisions and is not a substitute for a comprehensive compliance review. Use of this worksheet is voluntary, and it should not be filed with your Form M-1.

If you answer "No" to either of the questions below, you should review your entity's operations because the entity may not be in full compliance with the WHCRA provisions in Part 7 of ERISA. If you need help answering these questions or want additional guidance, you should contact the U.S. Department of Labor's Pension and Welfare Benefits Administration (PWBA) office in your region or consult with legal counsel or a professional employee benefits adviser.

(1) If the MEWA or ECE offers or provides mastectomy coverage, does the coverage comply with WHCRA's substantive requirements, which are contained in section 713 of ERISA? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 713 of ERISA generally provides that a group health plan, and a group health insurance issuer, that offers mastectomy coverage must also provide coverage for reconstructive surgery in a manner determined in consultation with the attending physician and the patient. Coverage includes all stages of reconstruction of the breast on which the mastectomy was performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, and prostheses and treatment of physical complications of the mastectomy, including lymphedemas.

- In addition, a plan or issuer may not deny a patient eligibility, or continued eligibility, to enroll or to renew coverage under the terms of the plan, solely for the purpose of avoiding the requirements of WHCRA. Nor may a plan or issuer penalize or otherwise reduce or limit the reimbursement of an attending provider, or provide incentives (monetary or otherwise) to an attending provider, to induce such provider to furnish care to an individual participant or beneficiary in a manner inconsistent with WHCRA.

- Plans and issuers may impose deductibles or coinsurance requirements for reconstructive surgery, prostheses, and treatment of physical complications in connection with a mastectomy, but only if the deductibles and coinsurance are consistent with those established for other benefits under the plan or coverage.

- State law protections may apply to certain health insurance coverage if the State law was in effect on October 21, 1998 (the date of enactment of WHCRA) and the State law requires at least the coverage for reconstructive breast surgery that is required by WHCRA.

(2) If the MEWA or ECE offers or provides mastectomy coverage, are the disclosure requirements under WHCRA satisfied? ..... ➤ ☐ Yes ☐ No ☐ N/A

- Section 713(b) of ERISA establishes a one-time notice requirement under which group health plans, and their health insurance issuers, must furnish a written description of the benefits that WHCRA requires. This notice is required to be furnished as part of the first general mailing made after October 21, 1998 by group health plans, and their health insurance issuers, or in any yearly information packet sent out regarding the plan, but, in any event, the one-time notice is required to be furnished not later than January 1, 1999.

- Section 713(a) of ERISA establishes a disclosure requirement under which group health plans, and their health insurance issuers, must again describe the benefits required under WHCRA, but the notice is to be provided to participants upon enrollment in the plan and annually thereafter.

- The enrollment notice must describe the benefits that WHCRA requires the group health plan, and its insurance companies or HMOs, to cover. If the following information is provided, then the group health plan is in compliance with this requirement. The enrollment notice indicates that, in the case of a participant or beneficiary who is receiving benefits in connection with a mastectomy, coverage will be provided in a manner determined in consultation with the attending physician and the patient, for all stages of reconstruction of the breast on which the mastectomy was performed, surgery and reconstruction of the other breast to produce a symmetrical appearance, and prostheses and treatment of physical complications of the mastectomy, including lymphedema. Additionally, the enrollment notice describes any deductibles and coinsurance limitations applicable to such coverage. Under WHCRA, coverage of breast reconstruction benefits may be subject only to deductibles and coinsurance limitations consistent with those established for other benefits under the plan or coverage.

. Question #2 is continued on the next page.

- WHCRA's annual notice must include: (1) information on the availability of benefits for the treatment of mastectomy-related services, including reconstructive surgery, prosthesis, and lymphedema under the plan; and (2) information (telephone number, web address, etc.) on how to obtain a detailed description of the mastectomy-related benefits available under the plan. The following examples illustrate how the annual notice requirement may be satisfied:

  (A) An entity distributes the enrollment notice to participants on an annual basis.

  (B) An entity annually distributes the following model notice informing participants: "Did you know that your plan, as required by the Women's Health and Cancer Rights Act of 1998, provides benefits for mastectomy-related services including reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy (including lymphedema)? Call your Plan Administrator [insert phone number] for more information."

  (C) In October of every year, an entity delivers to each participant (including those on COBRA) an issue of a periodical benefits newsletter with the following statement in a prominent place on the front page: "IMPORTANT NOTICE ABOUT YOUR RIGHTS UNDER YOUR GROUP HEALTH PLAN: October is National Breast Cancer Awareness Month. Your plan, [*or identify plan by name*], provides benefits for mastectomy-related services including reconstruction and surgery to achieve symmetry between the breasts, prostheses, and complications resulting from a mastectomy (including lymphedema). Keep this notice for your records and call your Plan Administrator for more information."

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To extend the authorization of the Drug-Free Communities Support Program for an additional 5 years, to authorize a National Community Antidrug Coalition Institute, and for other purposes. (Dec. 14, 2001; 115 Stat. 814)

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